DOCUMENT RESUME

ED 360 240 SO 023 274

AUTHOR	Miller, Barbara; Parisi, Lynn
TITLE	Individual Rights in International Perspective: Lessons on Canada, Mexico, Japan, and Nigeria.
INSTITUTION	Social Science Education Consortium, Inc., Boulder, Colo.
SPONS AGENCY	Commission on the Bicentennial of the United States Constitution, Washington, DC.
REPORT NO	ISBN-0-89994-367-5
PUB DATE	92
NOTE	250p.; Project name: "The Ideas and Ideals of the Bill of Rights Around the World".
AVAILABLE FROM	Social Science Education Consortium, 3300 Mitchell Lane, Suite 240, Boulder, CO 80301-2272.
PUB TYPE	Guides - Classroom Use - Teaching Guides (For Teacher) (052)
EDRS PRICE	MF01/PC10 Plus Postage.
DESCRIPTORS	*Citizenship Education; Civil Rights; *Constitutional Law; Cross Cultural Studies; Foreign Countries; *History Instruction; International Relations; Secondary Education; *Social Influences; Social Studies
IDENTIFIERS	*Bill of Rights; Canada; Japan; Mexico; Nigeria

ABSTRACT

The role of the U.S. Constitution as a model for an influence on the establishment of governments in other nations offers an effective vehicle for expanding education about this nation's civic values, rights, and responsibilities. By studying how the ideas and principles of the U.S. Constitution and the Bill of Rights have been adopted, adapted, and integrated into the political and social systems of other nations, under what circumstances these ideas have been transported and adopted successfully, and under what circumstances they have failed, students can gain insight into the Constitution and Bill of Rights, thereby developing a fuller appreciation of their own democratic tradition, and of the rights and responsibilities of U.S. citizenship. This work consists of a series of 31 lesson plans with handouts. The section dealing with Canada focuses not on the obvious similarities between Canada and the United States, but with the differences. The section on Mexico emphasizes that an important part of cross cultural understanding is recognizing the differing perceptions of the role of law in society. The similarity of the U.S. and Mexican constitutions is compared to the enormous differences in history and culture. The section on Japan seeks to provide a historical context for analyzing the Meiji and Showa constitutions and to help students recognize the importance of culture in shaping both the description and actual practice of government. The section on Nigeria provides a background in the ways some traditional cultures of Nigeria viewed the concept of rights. (DK)

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INDIVIDUAL RIGHTS IN INTERNATIONAL PERSPECTIVE

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LESSONS ON CANADA, MEXICO, JAPAN, AND NIGERIA

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The Ideas and Ideals of the Bill of Rights Around the World Project
Social Science Education Consortium

INDIVIDUAL RIGHTS IN INTERNATIONAL PERSPECTIVE: LESSONS ON CANADA, MEXICO, JAPAN, AND NIGERIA

by

Barbara Miller and Lynn Parisi

with

Elsie Begler, Roland Case, Folu Ogundimu

Ken Rodriguez, Akbarali Thobhani, Ruth Yates

The Ideas and Ideals of the Bill of Rights Around the World Project
Social Science Education Consortium
Boulder, Colorado
1992

ORDERING INFORMATION

This publication is available from:

Social Science Education Consortium
3300 Mitchell Lane, Suite 240
Boulder, CO 80301-2272

ISBN 0-89994-367-5

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This work was supported by the Commission on the Bicentennial of the United States Constitution. Grantees undertaking such projects under government sponsorship are encouraged to express freely their professional judgment in the conduct of the project. Points of view or opinions stated do not, therefore, necessarily represent the official position or policy of the Commission.

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ACKNOWLEDGMENTS

In 1990, the Social Science Education Consortium was funded by the Commission on the Bicentennial of the United States Constitution to conduct a one-year, statewide program to develop curriculum materials on the significance of the U.S. Bill of Rights in the framing and exercise of government in other nations. Middle and high school world geography, cultures, and history teachers participated in a series of workshops on the curriculum materials developed and then used the materials in their classrooms. Their feedback was critical in selecting the units to be included in this volume and in improving the units prior to publication. The participating teachers are listed below.

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We extend special thanks to the other contributors to this volume: Roland Case and Ruth Yates of Simon Fraser University, who developed the Canada unit; Elsie Begler of the Latin American Outreach Center at San Diego State University, and Ken Rodriguez of the Center for Civic Education, who contributed lessons and other materials for the Mexico unit; Folu Ogundimu of Michigan State University, the primary author of the Nigeria unit; and Akbarali Thobhani of the Institute for Intercultural Studies and Services at Metropolitan State College, who wrote the introduction and bibliography for the Nigeria unit. The project benefited throughout from the advice and assistance of Dr. John J. Patrick, Director of the Social Studies Development Center at Indiana University; Dr. Patrick served as constitutional studies consultant and curriculum reviewer. The work of Betsy Glade, project assistant, and Cindy Cook, production manager, is also appreciated.

Barbara Miller
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INTRODUCTION

The United States Constitution is this nation's most important export.

Albert Blaustein in the *U.S. Constitution:*
A Model for Nation Building

The role of the U.S. Constitution as a model for and influence on the establishment of governments in other nations offers an effective vehicle for expanding education about our nation's civic values, rights, and responsibilities. While critical to the study of our own nation, the U.S. Constitution is also a document of global significance, providing a model for and an enduring example of republican self-government that has been adopted and adapted by countries on every continent.

The bicentennial of the U.S. Constitution and world events inspired this project by offering both a special opportunity and an incentive to examine, analyze, and appreciate the Constitution and the Bill of Rights in an international context—as documents that have served as an ideal, an inspiration, and a practical model for other nations. Such an international perspective provides a vehicle for expanding the study of the Constitution to include history and social studies courses not traditionally targeted for such study—specifically standard courses in world geography, world cultures, and world history. With knowledge of the origins, fundamental ideas, applications, and implications of these documents throughout U.S. history, students can be challenged to explore what these principles and rights look like in other societies.

By studying how the ideas and principles of the Constitution and Bill of Rights have been adopted, adapted, and integrated into the political and social systems of other nations, under what circumstances these ideas have been transported and adopted successfully, and under what circumtances they have failed, students can gain insight into the Constitution and Bill of Rights, thereby developing a fuller appreciation of their own democratic tradition, of the rights and responsibilities of U.S. citizenship.

CANADA

by Roland Case and Ruth Yates
with Penney Clark

INTRODUCTION

John Locke, the English political philosopher, suggested that there are two types of people in the world—"lumpers" and "splitters." Lumpers are those persons inclined to stress the similarities among things; splitters are those who stress the differences. In our attempt to compare fundamental rights in Canada with those in the United States, we have placed ourselves in the camp of the splitters. Certainly, we do not ignore the similarities; given the great commonality between the two nations, the lumpers would have no trouble justifying that Canada and the United States are more alike than they are different, and perhaps particularly so regarding their concerns for fundamental rights. However, for educational reasons, our primary focus has been on the differences between the two countries—to bring into sharper relief the alternative perspectives and priorities on social values, judicial procedures, and legal protections.

The ability to learn from the experiences of other nations is clearly in evidence in the lessons Canadians have drawn from U.S. constitutional experiences. For example, the drafting of the Canadian Charter of Rights and Freedoms in 1982 was influenced heavily by Canadians' perceptions of the strengths and weaknesses of the U.S. Bill of Rights. In addition, Canadian judges look to U.S. decisions when deciding how to interpret, or how not to interpret, the Charter. The spirit in which Canadians have drawn from American precedent was expressed in a recent Supreme Court of Canada decision:

> In the United States, a collection of fundamental rights has been constitutionally protected for over two hundred years. The resulting practical and theoretical experience is immense, and should not be overlooked by Canadian courts. On the other hand, we must examine American constitutional law with a critical eye, and in this respect La Forest J. has noted in *R. v. Rahey* [1987] 1 S.C.R. 588 at p. 639:
>
>> While it is natural and even desirable for Canadian courts to refer to American constitutional jurisprudence in seeking to elucidate the meaning of *Charter* guarantees that have counterparts in the United States constitution, they should be wary of drawing too ready a parallel between constitutions born to different countries in different ages and in very different circumstances....
>
> Canada and the United States are not alike in every way, nor have the documents entrenching human rights in the two countries arisen in the same context. It is only common sense to recognize that, just as similarities will justify borrowing from the American experiences, differences may require that Canada's constitutional vision depart from that endorsed in the United States. (Chief Justice Dickson writing in *R. v. Keegstra*)

In this sense, constitutional rights in Canada are a critical reflection of their American counterparts. It is hoped that by studying Canadian approaches to fundamental rights, students may learn more about, and may thoughtfully reexamine, their own country's ways.

This packet contains eight lessons suitable for upper middle school and high school students. Our focus throughout has been to use Canadian constitutional issues and events as a means of reflecting on U.S. constitutional questions. These materials can be used in classes on U.S. history or law as readily as they can be used in classes on Canada, comparative government, or world history. A variety of teaching activities are included, ranging from analysis of political cartoons, participation in a simulation on constitutional planning, and creation of a timeline and a rights "quilt." The lessons need not be used in a set order, nor must all the lessons be completed in order for students to benefit.

The first three lessons deal with the fundamental values and traditions that underlie the Charter of Rights and Freedoms and other areas of Canadian social and political life. Similarities and contrasts are drawn with the values and traditions reflected in the Bill of Rights and with other aspects of American life.

The next two lessons explore differences between Canadian and American approaches to the practice and problems of applying a constitutional bill of rights. Also, students are involved in drafting a new Charter for Canada that addresses fundamental concerns occupying much public attention in Canada.

The final three lessons look at three areas of constitutional rights that deal directly with schools. These rights are teachers' freedom of expression, students' freedom from search and seizure, and freedom of religion in the context of prayer in the schools. Students are invited to assess the justification for these protections and to compare Canadian and American jurisprudence in these areas.

1

COMPARING CONSTITUTIONAL VALUES

Introduction: An important theme throughout this resource is that constitutional rights and constitutional frameworks are essentially fundamental value decisions about how a nation is to operate. Students are exposed to this notion and then involved in several tasks that explore the different value choices underlying Canadian and American constitutional law.

Objectives: Students will be able to:

1. Identify the values underlying various laws and practices in Canada and the United States.

2. Compare and contrast key values of the Charter and the Bill of Rights.

Materials: Copies of Handouts C-1 through C-4; U.S. Bill of Rights (copies are available in most U.S. history and government textbooks)

Time Required: 2 class periods

Procedure:

1. Prior to comparing fundamental rights in the United States with those in Canada, it may be helpful to get students thinking generally about Canada. For example, you might ask students, as a class or in small groups, to brainstorm all that they know about Canada and Canadians. Have students organize their lists of features around key concepts (e.g., geography, natural resources, cultures, political structure, climate, major cities). Using a wall map, identify the regions or cities that correlate with the information they have about Canada. Another way to introduce the unit would be to have students identify in two columns their perceptions of the ways in which Canada and the United States are alike and the ways in which they differ. Discuss what factors might account for the similarities and the differences between the two countries. It may be worth noting that most large Canadian population centers (90 percent of Canadians) lie close to the United States border. Ask students to speculate about the effects of this on Canadians. Be sure to inquire about students' knowledge of the legal differences and similarities between the two countries. Discuss whether the United States is more like Canada than any other country in the world.

2. Introduce the central theme of the unit: "One way to learn about another country and also to learn more about ourselves is by studying the basic values of the country." Discuss the notion of legal values—that all laws exist to serve some purpose—and the idea of comparing countries by comparing the values underlying their constitutionally protected rights. Older students will be able to read Handout C-1. With younger students, the handout might serve best as teacher notes for a class discussion on the topic. If students are unfamiliar with the concept of *values*, have them brainstorm examples of things that are really important to them. Draw the connection between what we value and our values. The questions raised in the handout and in the accompanying student assignments can be done orally, in small groups, or as individual written work.

3. Pass out Handout C-2 and a copy of the Bill of Rights. Remind students that the Canadian Charter of Rights and Freedoms is the Canadian equivalent of the U.S. Bill of Rights. By completing Handout C-3, students will realize the many ways in which the Charter and the Bill of Rights are similar and sometimes identical in wording. These similarities arise because the drafters of the Charter were able to learn from U.S. experiences with the Bill of Rights. Discuss answers to Handout C-3 before

proceeding to Handout C-4, which begins consideration of the differences that exist between the two documents.

4. To conclude the activity, ask students to once again reflect on the statement: "One way to learn about another country and also to learn more about ourselves is by studying the basic values of the country." Has this lesson changed their thinking about the statement. Why or why not?

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COMPARING LEGAL VALUES

Legal Values

All laws and legal institutions serve some purpose or purposes. For example, traffic laws regulate the speed of automobiles, determine the side of the road we drive on, and require the use of turn-signals. An obvious purpose of these "rules of the road" is to promote safety. Thus, safety is a *legal value*—a desired state or goal that our legal system protects or promotes.

We often refer to the choices or actions of an individual as indications of that person's values. For example, people who value their health are likely to watch their diets, exercise frequently, and avoid injury. Every law promotes some value, and the legal system generally reflects the complex set of values that society regards as its dominant goals or ideals.

Legal values can be identified by considering the different types of laws we have established. What are some of the values underlying the types of laws listed below?

Laws provide public services: Some laws create public agencies that provide such essential services as airports, schools, highways, electricity, and water.

Laws create public standards: Other laws establish standards or minimum requirements that must be met before certain actions are permitted. For example, everyone must take a road test before receiving a driver's license; doctors, lawyers, teachers, and others must be certified before they can practice their professions; buildings must be constructed according to established codes; and factories must provide safe working conditions for employees.

Laws promote human interaction: Many laws encourage interaction among persons and companies. These laws regulate business and personal contracts, help people recover expenses if someone damages their property or hurts them, and protect consumers against dishonest manufacturers.

Laws protect individuals against the state and other individuals: Laws create rights so that individuals may have confidence that their most basic interests and needs will be protected. These laws provide guarantees to allow people to practice their chosen religion, to be free from discrimination, to have a say in the political process, to be secure from physical harm, and so on.

Comparing Value Systems

We can use this idea of laws as reflections of underlying values as a way of comparing our national value system with the value systems of other nations. The priority or emphasis that some values are given over others is an inevitable feature of any value system—whether personal or legal. For example, all of us, to varying degrees, value money. Where we differ is in the relative importance we attach to this value. Thinking about your own value system, answer the following questions:

- If you saw a friend drop a five-dollar bill, would you keep it? Your answer indicates whether you value loyalty or honesty over small monetary gain.
- Would you take a job you hated if the pay was extremely good? Your decision reflects the value you attach to doing things you dislike versus the value you attach to money.
- If someone offered you twenty dollars to mistreat an innocent person, would you do it? Your answer indicates whether you attach greater value to the right of others to be free from cruel treatment or to your own monetary gain.

Just as personal decisions reflect the priority we attach to certain values, so too do laws reveal a country's value priorities. Differences in the laws between countries often reflect a difference in the values of those societies or, at least, a difference in their value priorities. For example, many provinces in Canada require the wearing of seat belts by all occupants; not all states have this law. This does not mean that those states do not care about the safety of their citizens, merely that they place greater emphasis on another value. Requiring drivers to wear seat belts limits the freedom of the individual to decide for himself or herself. Thus, most Canadian provinces place a higher priority on safety than on personal freedom to make up one's own mind in this situation.

Laws restricting people's ability to buy guns are stricter in Canada than in the United States. What does this say about differing value priorities? Canada has laws that create a national health care system that provides everyone with basic medical services free of charge. The United States provides such care only for the very poor. What does this say about differing value priorities?

It is worth noting that different laws do not *always* imply differences in values. For example, in Great Britain, the law requires that everyone drive on the left-hand side of the road whereas, as you know, we are required to drive on the right-hand side of the road. Although the details are different, the value underlying the law in each country is the same—protection of the safety of its citizens.

Comparing Constitutional Values

While many of our actions indicate a personal value, not all actions are significant indicators of the sort of person that we are. For example, your decision to watch a particular TV show suggests certain values or preferences on your part, but it does not tell us anything really important about your value system. On the other hand, how you decide to treat other people says much about your basic values. The same is true of legal systems: some differences in laws reflect little of the actual values alive in the nation, others provide significant insights about the basic values of the country. One area that is generally a very rich source of information about the basic values of a nation is the constitution. Constitutions establish the basic structure and confirm the fundamental rights within which a nation operates.

The central role of constitutional rights in setting out the basic value system of a society was described by two Canadian legal experts, Joseph C. Smith and David Weisstub:

> Constitutional statements embody the most fundamental values that the society commits itself to at the time. When this is accomplished in law, it means that the society undertakes to harness its energies to ensure that these values are protected and that the future of the society is shaped by them. The constitutional documents then serve as a monitor of the society's conduct.

In Canada, constitutional rights are set out in the Charter of Rights and Freedoms. In the United States, they are set out in the Bill of Rights. The Charter consists of the 34 sections of Part 1 of the Constitution Act, 1982. The Bill of Rights, which was ratified in 1791, consisted initially of the first ten amendments to the U.S. constitution. Thus, while the formal declaration of fundamental rights in America came soon after the United States secured independence from Great Britain, the Canadian constitutional declaration of fundamental rights in 1982 came more than 100 years after Canada was granted independence in 1867. Because Canada's separation from Great Britain was peaceful, Canadians were more willing to retain many British practices. (Britain does not have a written constitutional bill of rights, although it has other ways of protecting individual rights.) After an extended period of debate and controversy, Canada decided to do as the United States had done and formally establish a constitutional bill of rights.

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association.

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

   (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

   (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (a) to move to and take up residence in any province; and (b) to pursue the gaining of a livelihood in any province.

   (3) The rights specified in subsection (2) are subject to (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

   (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

8. Everyone has the right to be secure against unreasonable search and seizure.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

10. Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefore; (b) to retain and instruct counsel without delay and to be informed of that right; and (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

11. Any person charged with an offence has the right
    (a) to be informed without unreasonable delay of the specific offence;
    (b) to be tried within a reasonable time;
    (c) not to be compelled to be a witness in proceedings against that person in respect of the offense;
    (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
    (e) not to be denied reasonable bail without just cause;
    (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
    (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
    (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
    (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

    (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

    (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

    (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

    (2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where (a) there is a significant demand for communications with and services from that office in such language; or (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of new Brunswick in English or French.

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

23. (1) Citizens of Canada (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province, (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this charter, the evidence

shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

31. Nothing in this Charter extends the legislative powers of any body or authority.

32. (1) This Charter applies (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

(2) Nothwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

34. This Part may be cited as the Canadian Charter of Rights and Freedoms.

Handout C-3

COMPARING CONSTITUTIONAL RIGHTS IN CANADA AND THE UNITED STATES

Using your copies of the Charter of Rights and Freedoms and the Bill of Rights, summarize the rights protected in the respective sections and articles listed below. On the basis of these comparisons, what can you conclude about some of the shared values underlying constitutional rights in Canada and the United States?

	CHARTER	**BILL OF RIGHTS**	**UNDERLYING VALUES**
Fundamental freedoms	Section 2	Article 1	
Search and seizure	Section 8	Article IV	
Rights of accused	Sections 7, 10, 11	Articles V, VI, VIII	

CONTRASTING VALUE SYSTEMS

Consider the following sections in the Canadian Charter of Rights and Freedoms.

1. What values do these sections protect?
2. Are these values protected in the Bill of Rights?
3. Why might differences in value priorities exist between the two countries?

Section 4(1):

Section 15(1):

Section 17(1):

Section 27:

Section 28:

2 HISTORICAL HIGHLIGHTS: CANADA AND THE UNITED STATES

Introduction: Timelines provide an engaging, visual overview of the history of a nation. In this activity, students are invited to prepare and illustrate or describe comparative timelines of key events in Canadian and U.S. history.

Objectives: Students will be able to:

1. Explain briefly some of the key events in Canadian and U.S. history since the 1700s.
2. Reach conclusions about similarities and differences between the two countries.

Materials: Copies of Handout C-5

Time Required: 2 class periods

Procedure:

1. To enhance students' sense of the comparative historical development of Canada and the United States, distribute Handout C-5, which highlights selected events in the two countries' histories since the 1700s. Individually or in small groups, have students research one or more of the paired events on the timeline. Particular attention should be paid to comparing and contrasting events in each country. What can we learn about the similarities and differences between Canadians and Americans?

2. For younger students, suggest that they collect pictures or create drawings to represent key similarities and differences. This could be done by individual students or as a class mural by groups of students. Older students might be invited to write a short paragraph on or briefly speak about major events from both Canadian and U.S. perspectives.

Extension/Enrichment:

Have students research and produce a more extensive comparative timeline. If used as a class project, students can create a large mural with pictures or drawings and short summaries of key events.

CANADIAN AND AMERICAN TIMELINES

CANADA	UNITED STATES
Before 1700 Settlement by British, Spanish, and French	Before 1700 Settlement by British; Slave Trade
1759 British defeat French on Plains of Abraham	1776 Revolutionary War; U.S. Declaration of Independence
1812-13 War between Canada and U.S.	1812-13 War between Canada and U.S.
1867 Dominion of Canada created; end of Colonial status	1861 American Civil War
1898 Canada participates in Boer War in South Africa	1898 Spanish-American War
1914 Canada enters First World War at outset	1917 U.S. enters First World War
1929 Great Depression	1929 Great Depression
1935 Prime Minister Bennett's New Deal	1933 President F.D. Roosevelt's New Deal
1939 Canada enters Second World War immediately	1941 U.S. enters Second World War after Pearl Harbor
1950 Canada and U.S. involved in Korean War	1950 Canada and U.S. involved in Korean War
1970 Crisis between French and English	1970 Vietnam War; riots and civil unrest across U.S.
1982 Canadian Charter of Rights and Freedoms created	
1988 U.S./Canada Free Trade Deal	1988 U.S./Canada Free Trade Deal
1991 Constitutional conflict between French and English in Canada	

3 CONTRASTING CANADIAN AND AMERICAN ATTITUDES

Introduction: Political cartoons, like other caricatures, work because there is some truth to them. Students are invited to explore their perceptions of Canada and Canadians' perceptions of Americans by using cartoons and a comparative profile of values and traits.

Objectives: Students will be able to:

1. Interpret political cartoons.

2. Compare their perceptions of Canadians and Americans with the perceptions of others.

Materials: Copies of Handouts C-6 through C-8

Time Required: 3 class periods

Procedure:

1. Discuss with students the various devices used in political cartoons (see **Teacher Background Notes**). Present one of the cartoons and discuss with students the questions suggested on Handout C-6. Interpretation of the other cartoons can occur individually or in small groups. Students should share their observations with the class.

2. Introduce Handout C-8, which contains a somewhat stereotypical description of key characteristics of eight dimensions of the two countries. Discuss some of the ways in which Canada and the United States are similar. Divide the class into eight groups and have each group complete the assignment described on Handout C-8.

3. Using what they have learned from the analysis of political cartoons, invite students to draw cartoons that illustrate a pair of contrasting Canadian/American dimensions they have considered. Share their political cartoons with the rest of the class.

Extension/Enrichment:

Have students look through current newspapers to find cartoons dealing with international issues. Ask students to explain the devices used and the message communicated in each cartoon they find.

Teacher Background Notes:

Some common devices used in political cartoons are:

Size—An oversize figure appears powerful, threatening, and serious. A small figure appears powerless and intimidated.

Light and Dark—Dark design creates a feeling of disaster, fear, and mystery. Light design, in contrast, conveys light-heartedness, hope, and goodwill.

Lines—Light lines are often used to convey a feeling of whimsey and humor, dark lines one of seriousness. Crooked body lines convey tension.

Caricature—This technique emphasizes physical defects to the point where the person looks ridiculous, while still being instantly recognizable.

Symbolism—Examples of common symbols are Uncle Sam for the United States; a beaver, maple leaf, or Canadian flag for Canada; a mortar board for education; a gavel for justice; a dove for peace; and the hobnailed boot for an oppressor.

Stereotyping—Often groups of people are represented in an oversimplified and inaccurate way that makes them, nonetheless, easily recognizable.

Exaggeration—An object, person, situation, or idea is overstated. A politician who is besieged by problems might be depicted as being tied to a burning stake, with each piece of firewood labeled with the name of the political problem.

POLITICAL CARTOON INTERPRETATION

Visuals

What people do you see in this cartoon?

What objects do you see in this cartoon?

What objects do you think are symbols? What do you think each symbol stands for?

Do you see examples of caricature, stereotyping, or exaggeration? If so, what are they?

Does the cartoonist use any other common devices? If so, how are they used?

Words

Does the cartoon have a title? If so, what is it?

Does the cartoon have a caption? If so, what is it?

What other words or phrases do you see in the cartoon?

How do the words help to make the meaning of the cartoon clear?

What topic or issue is being presented in the cartoon? What is the cartoonist's point of view?

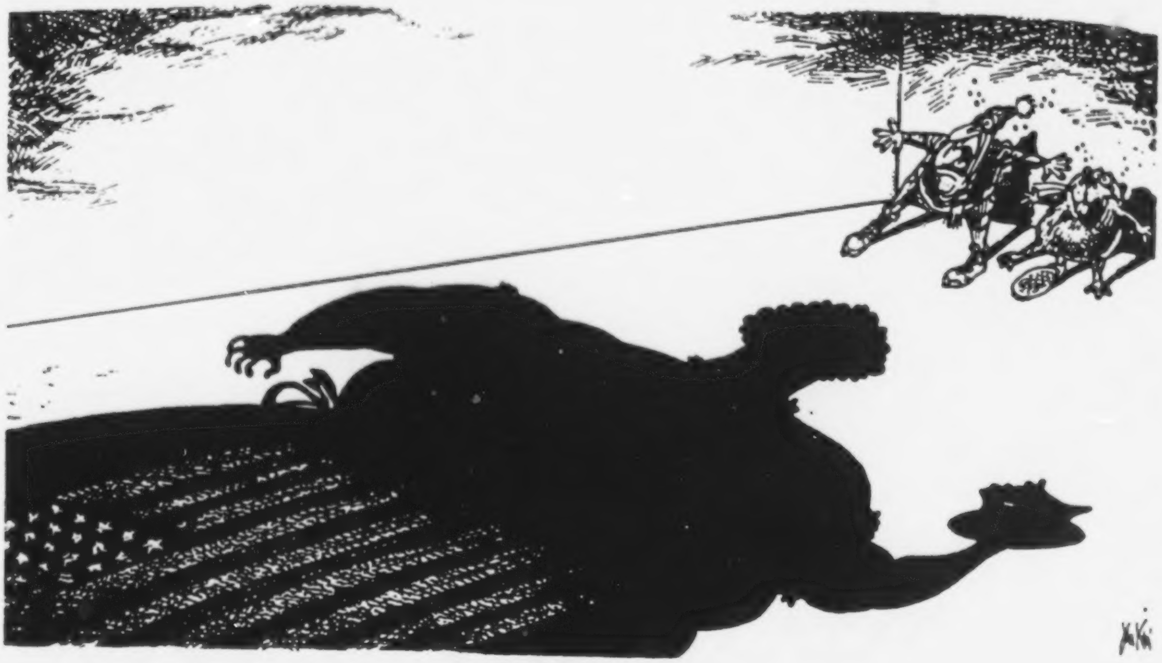
Can you think of special-interest groups that would agree/disagree with this cartoon? Explain.

What are some possible solutions to this problem?

Why do you think the cartoonist chose this topic or issue?

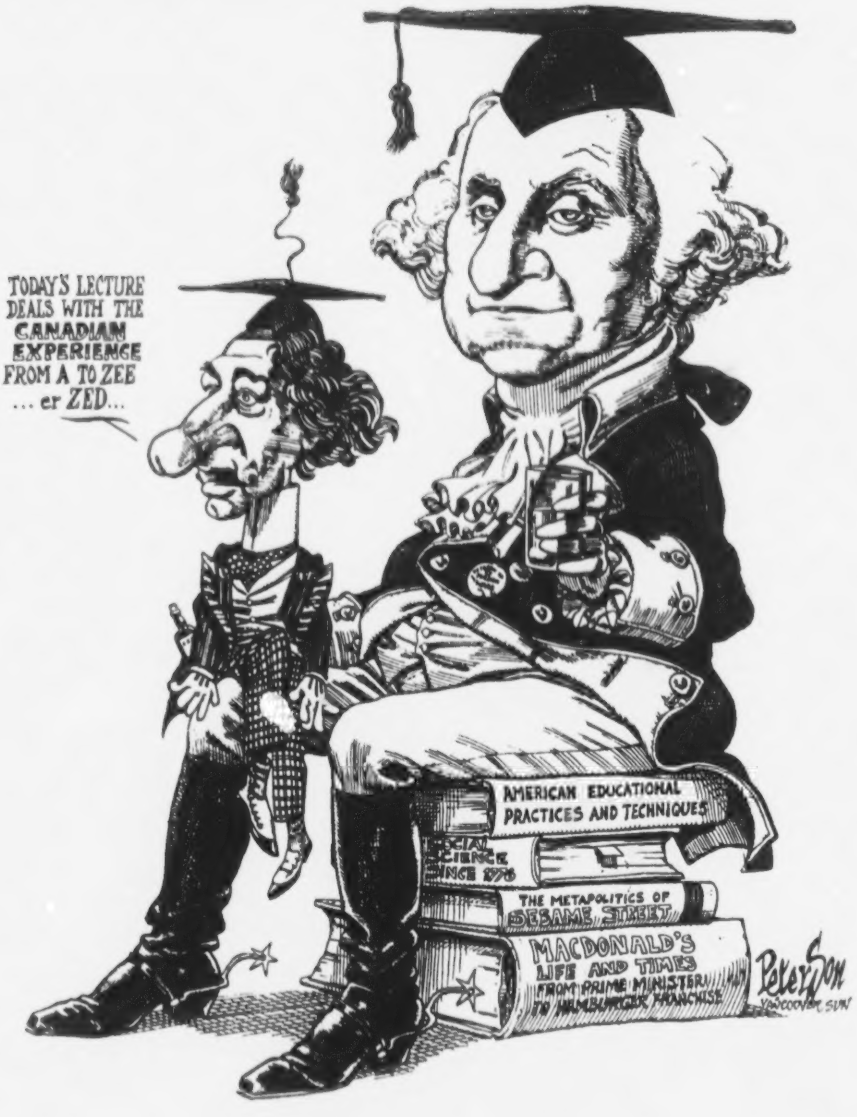
Can you think of other ways the cartoonist could have presented the same point of view using a cartoon? Explain.

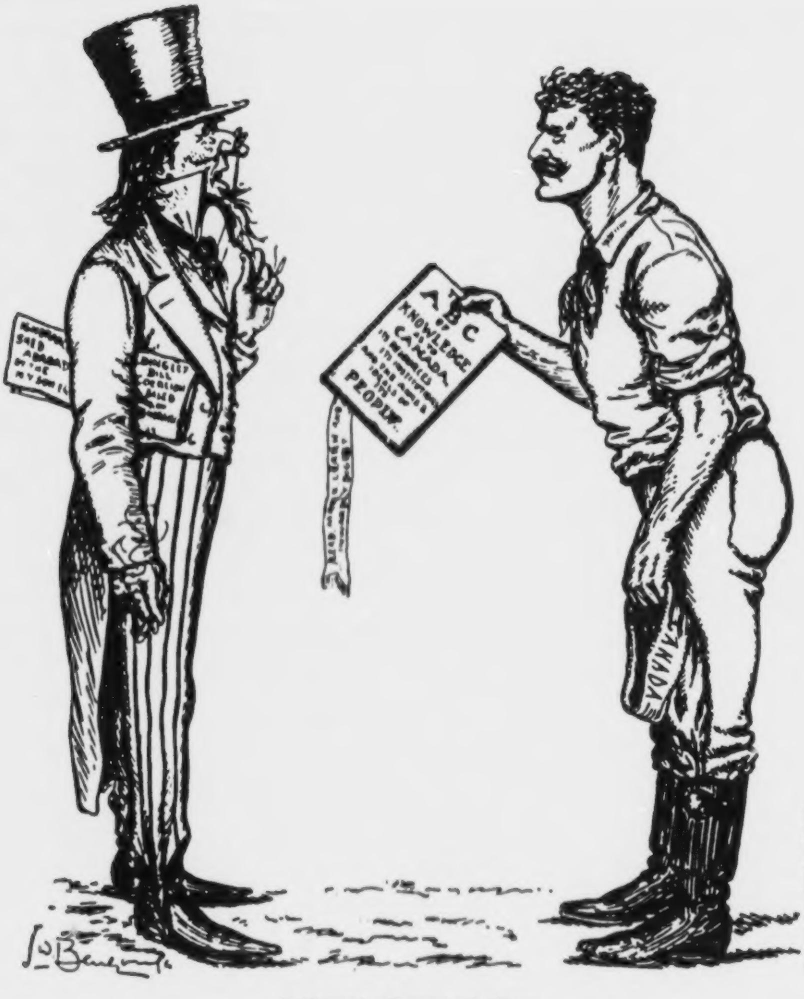
CANADIAN-AMERICAN REFLECTIONS



MOM AND APPLE PIE...

The Globe and Mail, Toronto.


TODAY'S LECTURE DEALS WITH THE CANADIAN EXPERIENCE FROM A TO ZEE ... er ZED...
AMERICAN EDUCATIONAL PRACTICES AND TECHNIQUES
OCIAL CIENCE INCE 1776
THE METAPOLITICS OF SESAME STREET
MACDONALD'S LIFE AND TIMES FROM PRIME MINISTER TO HAMBURGER FRANCHISE
PeterSon
VANCOUVER SUN


A B C
KNOWLEDGE
CANADA
PEOPLE
CANADA

Bengough/Grip/1884

A Timely Presentation

Jack Canuck: "Neighbour, what chiefly ails you is ignorance. Accept this little work, which, if duly studied, will save you in the future from making yourself quite so ridiculous."

REVOLUTIONARIES VS. COUNTERREVOLUTIONARIES

The following lists are derived from an article written by Seymour Martin Lipset, an American scholar who worked at a Canadian university for a number of years. The article was written 30 years ago and reflects the author's personal observations about similarities and differences between Canadians and Americans. Although exaggerated, the article raises interesting and provocative comparisons.

Lipset identifies five similar traits between Americans and Canadians and a long list of differences summarized under eight categories. He stresses that the differences are more matters of degree than they are differences in kind. If Canada and the United States were to be put on a continuum, we would find many areas on which most Canadians and most Americans would agree; the differences pointed out on the chart represent extremes on the continuum.

Similarities between Canada and the United States

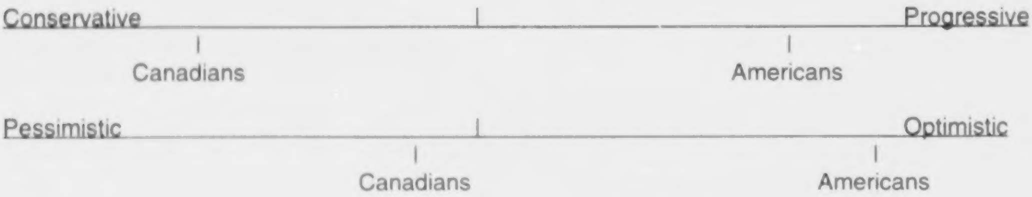
Discuss each of the similarities listed below. From your experiences are these comparisons representative of Canadians and Americans? Can you think of other similarities not mentioned by Lipset?

Urbanized
Industrialized
Politically Stable
Economically Developed
Socially Mobile

Differences between Canada and the United States

Select one of the eight categories of differences and clarify your understanding of all of the terms used to describe Canadian and American differences. (You may need to use a dictionary.) Do you agree with the words that have been used to describe Americans? Why or why not? How do the terms used to describe Canadians fit your impressions of Canada? As indicated in the examples below, for each pair of terms locate Canada and the United States at appropriate points along the spectrum.

For example:



	Canada	United States
National Identity	Hierarchical	Equal Opportunity
	Conservative	Progressive
	Traditional	Liberal
Political Systems	Monarchical	Republican
	Respect for Authority	Critical of Authority
	Obedience to Law	Political Intolerance
	Informal Social Controls	Law Enforcement
	Legal Officers Appointed	Legal Officers Elected
	Lawful Resolution of Disputes	Conflict Oriented
Economic Systems	Pessimistic	Optimistic
	Hesitant	Aggressive
	Protectionist	Speculative
	Cautious	Risk-takers
	Quality	Quantity
	Collectivism	Individualism
	Government Intervention	Laissez-faire
	Centralist	Autonomous
Social Systems	Ethnic Mosaic	Melting Pot
	Preservation of Identity	Assimilation
	Counterrevolutionary	Revolutionary
	Loyalist	Rebel
	Traditional	Utopian
Frontier Experience	Conservative	Independent
	Conformist	Reformist
	Traditional Authority Respected	People Source of Power and Authority
	Resistant to Absorption into United States	Imperialist
	National Integrity	Regionalism
Education	Elitist	Egalitarian
	Humanist	Technical/Vocational
	Intellectual	Physical/Social
	High Culture	Citizenship
	Scholarship	Achievement
	Self-effacing	Self-orientation
Religious Traditions	Conservative	Evangelistic
	Established	Voluntary
	Strong Ties between Church and State	Separation between Church and State
	Unification	Fundamentalist
	Reinforce Morals	Experimental
Personal Character	Reserved	Assertive
	Careful	Quick to Strike
	Honest	Shrewd

4

JUDGES AND CONSTITUTIONAL RIGHTS

Introduction: One of the very thorny issues surrounding constitutional rights is the power of the judiciary to interpret the Constitution. This activity raises some of the difficulties surrounding this issue and invites students to critically assess the adequacy of various options. This lesson is most suitable for high school students.

Objectives: Students will be able to:

1. Explain the difficulties facing the courts when applying constitutional rights in particular cases.

2. Evaluate Canadian responses to the threat of excessive judicial influence.

Materials: Copies of Handouts C-9 through C-12

Time Required: 3 class periods

Procedure:

1. Have students read Handout C-9, which explains the role of constitutional rights in protecting minorities and raises the dilemma that arises when unelected judges have considerable power in deciding which laws are constitutionally valid. Three strategies employed in Canada to deal with this dilemma are explored.

2. To help students see how difficult it is to apply the law, have them complete the assignment detailed in Handout C-10. To help students critically assess the nature of the dilemma and possible responses to it, have students complete the assignments detailed in Handouts C-11 and C-12. All of these assignments may be done individually, in small groups, or as a class.

Handout C-10 Answer Key: In discussing the Canadian courts' decisions in these cases, you might ask whether, if a similar provision existed in the Bill of Rights, they would be considered reasonable limits under American law. Those discussions provide an opportunity to reinforce the notion that laws serve particular values and that most constitutional cases involving rights are really disputes about which values are to be given legal priority.

The Seal Hunt Case.* The judge ruled that limiting the International Fund for Animal Welfare's freedom of expression was demonstrably justified and therefore not a violation of the Charter.

1. The government claimed that the regulations were aimed at the conservation and protection of seals and the proper management and control of the seal fishery. They stated that the regulations were necessary to protect the safety of the hunters: hunting seals by aircraft was extremely dangerous because of the hazards of landing on the ice floes. Also, the regulations were necessary to control the presence of low-flying aircraft, which scattered the seal herd and interfered with parent seals caring for their young. The animal welfare group claimed that the real purpose of the regulations was to reduce negative publicity about the seal hunt.

**International Fund for Animal Welfare v. The Queen* [1987] 30 Canadian Criminal Cases (3d) 80.

The judge rejected this suggestion by the animal welfare group because permission had been granted to many media groups. The only groups that were consistently denied were those who had a publicly stated intention of disrupting the hunt. The judge decided that the government objective of protecting both the seals and the right of seal hunters to earn their living was justified.

2. The regulation of aircraft was seen as directly connected to the safety of the hunters and control of the seal herds. Because permission was granted to many media groups, the regulations were not seen to disrupt public access to information about the hunt any more than was necessary. Finally, the harm caused by denying disruptive groups access to the ice floes was seen to be outweighed by the potential damage to the entire seal hunting industry.

The Reverse Onus Case.** The Court ruled that the reverse onus clause, *as specified*, was not a reasonable limitation on the right to be presumed innocent.

1. The limitation met the first requirement. Section 8 of the Narcotic Control Act is a duly enacted piece of legislation. Its objective is to reduce the social, economic, and personal damage caused as a result of drug addiction by making it easier to convict suspected drug traffickers. This goal is consistent with those of a free and democratic society and, given the extent of drug addiction, was accepted by the Court as a demonstrably justified objective.

2. The requirement that the means used to pursue this objective is justified was not met. The means must be carefully designed to further the law's objective—it must not be arbitrary, unfair, or irrational. The Court decided that Section 8 of the Narcotic Control Act did not meet this test because it required persons in possession of *any* quantity of an illegal drug to prove their innocence of trafficking—even if the amount was a very small quantity. Given that the offense carries with it the possibility of imprisonment for life, the Court considered it irrational and potentially unfair that mere possession (of very small quantities) gave the Crown the power to presume that an individual intended to traffic in the drug. The failure of the Act to specify, for example, minimal amounts of illegal drugs that a person must possess before the reverse onus could be invoked, meant that it was not a "demonstrably justified means." This failure is even more unacceptable when considered in light of the great importance the legal system attaches to the principle that accused persons are to be presumed innocent until proven guilty.

References:

Case, Roland, "Why Teach Judicial Reasoning?" in *Ends in View: An Analysis of the Goals of Law-Related Education*, J. Coombs, S. Parkinson, and R. Case, eds. (Vancouver, BC: University of British Columbia and Simon Fraser University, and Boulder, CO: Social Science Education Consortium, 1990).

Case, Roland, et al., *Understanding Charter Decisions: A Guide to Judicial Reasoning and the Canadian Charter of Rights and Freedoms* (Toronto: IPI Publishing, 1989).

Luban, David, "Judicial Activism vs. Judicial Restraint," *Report from the Center for Philosophy and Public Policy* 7, no. 4 (1987).

***Regina v. Oakes* [1986] 1 Supreme Court Reports (4th) 1.

THE DILEMMA OF CONSTITUTIONAL RIGHTS

One of the primary reasons for establishing a constitutional bill of rights is to reduce the likelihood of the majority abusing the rights of minorities. A constitutional bill of rights could be called the "moral safety net" of a nation. It is the "bottom-line" defense through which legislation and government actions must be screened. Laws that violate the basic rights guaranteed by the constitution will be ruled unconstitutional, even if they have been passed by democratically elected legislators.

The need for constitutional protections arises because there is always a danger that the majority of people may decide to treat certain individuals or groups in an unfair manner. For example, the Canadian government only recently apologized to Japanese-Canadians and paid them for losses resulting from forced removal from their homes and business on the west coast of Canada during World War II. It is generally believed that racial prejudices against Japanese-Canadians at the time of the war was largely responsible for the way the Canadian government treated them. The supposed threat to national security posed by the Japanese-Canadians was thought to be more of an excuse than a genuine reason. In speaking before a government inquiry, one Japanese-Canadian suggested that "Our history in Canada is a legacy of racism made legitimate by our political institutions." One of the motives for establishing the Charter in 1982 was to reduce the likelihood of similar events recurring in Canada. (While U.S. wartime treatment of Japanese-Americans was similar in some respects, it was less harsh and ended far sooner than Canada's abuse of its Japanese population.)

The responsibility for deciding whether a law or government action is unconstitutional lies with the courts. This responsibility gives rise to what is called *judicial review*—the power of the courts to declare laws invalid if they violate the constitution. In the United States, this authority was confirmed in a famous 1803 Supreme Court decision, *Marbury v. Madison*; in Canada, it was expressly stated in section 52 of the Canadian Constitution:

> (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the constitution is, to the extent of the inconsistency, of no force and effect.

Judicial review places immense power in the hands of a small group of judges. This power gives rise to a very troublesome dilemma: can or should judges, and not democratically elected officials, define the direction a nation follows regarding its fundamental rights? We will refer to this dilemma as the threat of judicial tyranny. This concern arises when a nation invests certain rights with special constitutional status—it is said that these rights are *entrenched*—and puts the power to interpret and apply these rights in the hands of unelected judges.

The Threat of Judicial Tyranny

The restrictions placed on the democratic will of the people by *entrenching* constitutional rights means that the courts have the power to override laws passed by elected representatives. This judicial power might not be as troubling if constitutional rights clearly specified all the situations to which they were meant to apply. Unfortunately, this is not the case; judges must exercise considerable judgment when applying the Constitution.

Applying constitutional rights in particular instances is not a straightforward task. Many people incorrectly think that law is a set of rigid rules that clearly specify exactly what situations they are meant to cover. Laws, especially constitutional rights, are often very flexible and far from clear. In the case of constitutions, this open-ended quality is often deliberately created. Constitutions are expected to be relevant for centuries; if they are too specific, they become dated more quickly as social and political realities change. Constitutions cover a wide range of situations; if they are too specific, they become excessively long. As a result, constitutional rights are general and open to interpretation.

Consider the following examples of the kinds of questions that arise when trying to apply a constitutional right. Section 2 of the Charter states that everyone is guaranteed "freedom of conscience and religion." While we may know the meaning of the words, we cannot be sure about the situations this right is meant to protect. Does it mean that those who believe that war is wrong have a right to withhold that portion of their taxes that supports the military? Does it mean that people whose religion forbids the exchange of blood have the right to prevent their children from receiving blood transfusions even though their children may die without the transfusions? Does it mean store owners can be required to stay closed on Sunday so employees may practice their religion?

These questions and countless other questions about the protection that the constitution provides (or does not provide) are answered by the courts in cases presented to them. This important responsibility has fuelled a perception by many people that, in constitutional cases where the law is often not explicit, judges have the absolute power to decide what the law is. Former U.S. Chief Justice Charles Evans Hughes once said "the Constitution is what the judges say it is." While it is true that the courts have the final authority to interpret the constitution, it is misleading to suggest that judges are free to impose their personal preferences. No doubt some judges will fail to interpret the law as impartially as is humanly possible, but this does not mean that judges do not have a moral and legal responsibility to attempt to interpret the constitution impartially. Many guidelines developed over hundreds of years assist judges in their task of interpreting constitutional rights.

Three Canadian Responses to the Threat

When deciding to adopt a written set of constitutional rights in 1982, Canadians were concerned about the increased power this implied for judges. (Under an unwritten constitution, judges are less able to override the wishes of the legislatures.) Because the Charter was established long after the Bill of Rights, Canadians were able to learn from U.S. experiences. There are at least three differences in the ways Canadian judges relate to the Canadian Charter that are direct responses to the perceived threat of judicial tyranny.

1. Deference to legislators. One Canadian response to the dilemma of judicial tyranny has been to retain aspects of the British tradition known as *parliamentary supremacy*. The term means that judges should remember that Parliament—the elected body of government—is the supreme, or highest, authority. While Parliament is no longer the supreme authority—the Constitution is now the final authority in many areas—the tradition has continued to mean that judges in Canada are inclined to defer to the wishes of legislators where possible. Where there is some doubt as to whether a law is constitutional, judges will lean towards giving the benefit of the doubt to the legislators. This inclination to the majority or collective voice is not the attitude of U.S. courts, which have shown a strong inclination to support the rights of the individual, not the state.

This tendency of Canadian courts to support the wishes of the legislators is not limited to decisions about how to interpret the Charter. Even in cases where the Courts have decided that a law is unconstitutional, there is a clear willingness to give legislators the option to remedy the situation. For example, recently many of the laws in the province of Manitoba were ruled unconstitutional because they had been published only in English; in order for Manitoba laws to be constitutionally valid, they must also be published in French. Instead of ruling the laws invalid, the Supreme Court gave the province two years to translate the laws into French.

In British Columbia, the way boundaries for election purposes were set up violated the Charter; instead of ruling recent elections invalid, the court gave the province time to revise its legislation on electoral representation. This is in contrast to the attitude of American judges. U.S. courts have rejected outright state legislation setting up electoral boundaries, even though there were only minor inequalities, representing differences as little as 1 percent of the population in a region.

In referring to cases like the ones just mentioned, Supreme Court of Canada Justice Beverly McLachlan offered the following observation:

> It seems to me that we have in examples such as these the beginnings of a tradition of co-operation which will avoid the conflict between the courts and other branches of government which has occurred in the United States and which, if it prevails, will mean that the courts do not have to go to the lengths that they have in the past had to go in the United States and really put themselves in quasi-legislative and administrative roles.

2. Constitutional override. In establishing the Canadian Charter, an important exception was made to the principle of constitutionally entrenched rights—the principle that rights which are guaranteed by the Constitution can only be legally overridden by amending the Constitution. The drafters of the Charter created what is now called the "notwithstanding clause" (Section 33), which allows legislators to remove some legislation from judicial review merely by expressly stating that the law is not be limited by certain rights under the Charter. Some have called this provision an "escape clause." Only certain of the rights in the Charter can be overridden by this "notwithstanding clause."

This clause was recently employed by the province of Quebec to exempt a law forbidding the use of English on signs appearing on the outside of buildings. The reason for the restriction is that Quebec represents a tiny pocket of French culture in a continent that is dominated by English-speaking people. It is their fear that unless Quebec takes dramatic steps, such as restricting the use of English, their cultural and linguistic heritage will be lost. Many English-Canadians were furious that the use of English, which is one of the two official languages of the country, would be restricted in this way.

Can you think of U.S. court decisions where the ability to exempt the law would have been a much desired option?

3. Reasonable limits. A third Canadian response to concerns over the threat of judicial tyranny was to indicate in Section 1 of the Charter that "reasonable limits" may be imposed by legislators on constitutional rights provided such limits are "demonstrably justified in a free and democratic society." The courts, which have the final word on the reasonableness of any limit, have interpreted this section to require that the government (or any other party defending the limitation of a Charter right) establish that both the objectives for limiting the right and the means used to achieve these objectives are clearly justified.

This qualification on the rights protected by the Charter was seen as a compromise between those who are reluctant to have controversial cases decided by a small group of appointed judges, and those who believe that the protection of individual rights requires some constraints on the power of the legislators. As one Canadian commentator suggested: "There would be limits to rights—but judges, not politicians, would decide what limits were reasonable."

The three strategies we have just described have been the subject of considerable controversy in Canada. Many people believe that more should be done to protect against the threat of judicial tyranny; others believe that these strategies are excessive and undermine the purpose of having entrenched constitutional rights. What do you think?

WHAT ARE REASONABLE LIMITS?

Section 1 of the Charter specifies that any limit on Charter rights must be reasonable and demonstrably justified in a free and democratic society. Canadian courts have interpreted "reasonable" and "demonstrably justified" to imply that the objective or goal of the limit and the means or method used to achieve or maintain it must both be defensible. In other words, even though a right has been infringed it may still not violate the Charter if there is a clearly justified objective for limiting the right and if the means used to limit the right are clearly justified.

Read the following actual cases and decide if these limitations on Charter rights are reasonable limits under Canadian constitutional law.

The Seal Hunt Case

Since the 1960s, groups opposed to the killing of baby seals have attempted to publicize and often disrupt the annual seal hunt off Eastern Canadian coasts. In reaction, the federal government required groups to obtain permission either to land aircraft within one-half mile of any seal on the ice within the hunting area or to fly an aircraft at an altitude of less than 2000 feet over seals within the hunting area. Although permission was granted to many newspaper and television people, requests from the International Fund for Animal Welfare were repeatedly refused. This group claimed that their Charter guarantee of freedom of thought and expression was infringed because they were being denied the opportunity to collect and publicize information about the seal hunt. The Federal Court judge who heard the case agreed with the animal welfare group that Section 2(b) of the Charter had been infringed. He then considered whether the regulations were a reasonable limit on the right.

1. Does the limitation promote a clearly justified objective? Defend your answer.

2. Does the limitation represent a clearly justified means? Defend your answer.

The "Reverse Onus" Case

David Oakes was in a car outside a London, Ontario, tavern when approached by the police. They found in his possession eight one-gram vials of hashish oil—an illegal drug that is made from cannabis resin—and $600 in cash. Although Mr. Oakes was not caught trafficking in the hashish oil, he was charged under the Narcotic Control Act with possession of a narcotic for the purpose of trafficking. This is a serious offense and can lead to life imprisonment. Because it is difficult to collect evidence about the actual selling of illegal drugs and because widespread use of illegal drugs is a grave problem, a special clause was written into the Narcotic Control Act to assist law enforcement officers with the prosecution of suspected drug traffickers. This section (Section 8) allows for what is called "reverse onus." It states that if the Crown* can prove that a person was in possession of an illegal drug, then it is up to the accused to establish that his possession of the drug was not for the purpose of trafficking. In other words, merely by having possession of the illegal drug, the accused is no longer presumed innocent of trafficking.

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*Crown is the term used to refer to the government lawyers and other officials working on behalf of the government; it is the Canadian equivalent of "the State." The term "Crown" is used to signify the monarch (i.e., the king or queen), who is the symbolic head of government in Canada.

Mr. Oakes admitted to the police that he had purchased ten vials of hashish oil but claimed that they were for his own use and that the $600 was from a government check. On the basis of the evidence, the judge found Mr. Oakes guilty of possession of an illegal drug and was about to proceed under the reverse onus clause to require Mr. Oakes to prove his innocence of the crime of possession for the sake of trafficking. At this point Mr. Oakes' lawyer objected, claiming that this clause violated his client's Charter rights. The judge agreed that his Charter right to be *presumed* innocent until *proven* guilty of trafficking had been violated by the reverse onus clause. He then considered whether the reverse onus clause was a reasonable limitation on the right.

1. Does the limitation promote a clearly justified objective? Defend your answer.

2. Does the limitation represent a clearly justified means? Defend your answer.

DEALING WITH THE THREAT OF JUDICIAL TYRANNY

1. In your own words, define what is meant by the threat of judicial tyranny. Do you think that it is a problem that we face? Explain why or why not.

2. Think about the three Canadian responses to the threat of judicial tyranny. List the advantages and disadvantages of each strategy.
    - Parliamentary supremacy—deference to legislators

        Advantages *Disadvantages*

    - Constitutional override—the notwithstanding provision

        Advantages *Disadvantages*

    - Reasonable limits clause

        Advantages *Disadvantages*

3. Do you think the United States should adopt any of these strategies? Explain your answer.

THE POWER PLAY

Summarize, in your own words, what each of the following authors is saying. Indicate whether you agree with the author's statement and explain the reasons for your position. In the process, think about the reasons that might be offered by someone who takes the opposite side to your position.

> *If human rights and harmonious relations between cultures are forms of the beautiful, then the state is a work of art that is never finished.*
>
> —F.R. Scott, Canadian constitutional expert

> *...by putting these rights into its constitution, a nation transfers the final authority for setting inherently contestable dilemmas about the appropriate limits of public action from the political to the judicial branch of government.*
>
> —Paul Weiler, Canadian constitutional expert
> at Harvard University

> *Constitutional choices are in fact different from ordinary [policy] decisions. The reason is simple, the most important value choices have already been made by the framers of the Constitution.*
>
> —Judge Skilly Wright, U.S. Circuit Court

5

IMPROVING THE CONSTITUTION

Introduction: This simulation activity involves students in representing various interest groups in Canada and participating in the drafting of a revised constitutional charter of rights.

Objectives: Students will be able to:

1. Apply their understanding of the competing concerns expressed by interest groups in Canada about the existing constitutional arrangement.

2. Create a Charter of Fundamental Rights for Canada.

3. Negotiate and reach consensus with others on difficult matters.

Materials: Copies of Handouts C-13 and C-2 (from Lesson 1); copies of the Role Cards; U.S. Bill of Rights; posting paper and markers

Time Required: 3 class periods

Procedure:

1. Provide students with the following background information:

> Because the "notwithstanding clause" was not extended to include minority language rights, Quebec refused to become a party to the Constitution Act, 1982. While the Province of Quebec did not sign the Charter of Rights and Freedoms when it became law, it invoked the "notwithstanding" provision to pass a law making use of English signs on businesses operating in Quebec illegal. The troubles with Quebec do not end there; the effort to have unanimous participation in the Constitution were frustrated by the failure of the Meech Lake Accord, a federal government attempt to strike a compromise with Quebec. Other provinces and minority groups were also deeply dissatisfied with their lack of power to continue important aspects of their own affairs. More recently, politicians from the federal, provincial, and territorial governments and from native groups unanimously proposed a new plan, called the Unity Accord. However, in a national referendum held on October 26, 1992, the majority of Canadians rejected the proposal put forward by their political leaders.
>
> There is concern that Canada is in danger of breaking up as a country unless a new agreement is reached. One of the sore points of the constitutional negotiations was the failure to achieve consensus. It is also clear that there was not enough participation by the public.

2. Tell students they will be participating in a simulation that will give them the opportunity to collaborate in creating a constitutional document for Canada. Distribute Handout C-13 as background and have students read it individually or in small groups.

3. Divide the class into groups according to the following pattern, which represents the five geographical regions of Canada and the distribution of the population. (The total population of Canada is approximately 25 million. The simulation is based on one student representing one million people.)

- The Maritimes—The provinces of Newfoundland, Prince Edward Island, Nova Scotia, and New Brunswick, with a population of 4 million represented by a group of 4 students.
- Quebec—A primarily French-speaking province, with a population of 6 million represented by a group of 6 students. One of these students should represent the native population of Quebec.
- Ontario—A primarily English-speaking province, with a population of 8 million represented by a group of 8 students.
- The Prairies—The provinces of Manitoba, Saskatchewan, and the North West Territory, with a population of 3 million, 1 million of whom are native peoples. Represented by 3 students.
- The West—The provinces of Alberta, British Columbia, and the Yukon Territory, with a population of 4 million, 1 million of whom are native peoples. Represented by 4 students.

4. Give each group the role card describing its region—its political, social, cultural, and economic makeup. Also give each student a role card describing the particular political and cultural interests he/she represents. Working together in their groups, students develop a list of proposals for a Charter of Fundamental Rights. The group should propose one right for each member of their group, keeping each term clear and brief. The proposals should be written on posting paper. Give each group copies of the Canadian Charter of Rights and Freedoms (Handout C-2 from Lesson 1) and the U.S. Bill of Rights to give them some ideas about the kinds of proposals they might want to submit.

5. Reassemble the class, making sure that each group has posted its proposals on the wall so all students can see them. Point to the proposals one at a time, allowing a few minutes for discussion; then ask students to vote on each proposal. If 80 percent of the students think the proposal should be included in the Charter, keep it; if more than 20 percent of the students disagree with the proposal, stroke it off the paper. After the first few proposals are voted on, suggest to the class that they can spend the next ten minutes negotiating with other groups or individual representatives to persuade them to support a particular proposal. Continue voting on the rights until all have been either selected or discarded. Have a student write the surviving proposals on the chalkboard.

6. Have students return to their small groups to examine the draft document on the board and decide whether they can collectively support it as it stands. In order for it to become law, it must have unanimous support. If the whole group cannot come to an agreement, students should think of amendments that are necessary before the group can agree to vote as a unit either for or against the new Charter. If the group cannot come to an agreement, they must vote against the Charter.

7. Reconvene the class and ask each group to vote for or against the Charter. If the Charter fails to pass, ask for suggestions for amendments. Ask students what the consequences are for failure to agree. Ask students who were representing special interests what they would do now.

8. Conduct a debriefing session with the students, using the following questions:

- How does it feel to be a member of a minority group?
- If you were among the majority, how did you treat the minorities in your group?
- Was it difficult to come to a consensus in your group?
- How did you feel when your proposed term was accepted/rejected?
- How did group members react when they did/did not achieve their goals?
- How difficult would it be to come up with a constitutional document everyone agreed on?
- How similar or different is your Charter from the Canadian Charter or the U.S. Bill of Rights?
- What important considerations does your Charter fail to deal with?

LAW, THE CHARTER, AND THE IDEA OF CANADA

Thomas R. Berger

Despite its flaws, our Constitution and Charter of Rights, adopted on April 17th, 1982, is a valuable and uniquely Canadian undertaking, revealing in its own way our progress towards defining our idea of Canada.

I believe there is a distinctive Canadian intellectual contribution to the legal and political order, a way of enabling human rights and fundamental freedoms to prevail in a world where minority rights are constantly in danger of extinguishment and diversity is constantly under attack. Let me offer you one man's idea of what Canada may have to contribute to the furtherance of human rights and fundamental freedoms in such a world.

Here in Vancouver, for a majority of children in elementary grades on the east side, English is a second language. British Columbia has more than 200,000 citizens of Asian descent and the highest concentration of Native peoples in any province of Canada.

We in Canada do not share the American goal, often reiterated, of integration and assimilation. We believe that diversity is not inconsistent with a common citizenship. Furthermore, diversity is the condition of the world. In fact, it may be that our own experience, our own constitutional arrangements, our own mix of population, make us a more likely prototype than the United States for the world of the future.

We are often used to comparing ourselves with the United States. Because we share the same language, the same continent, and the same traditions of democracy and due process, such comparisons could come easily. And, when we look at our own record in defense of human rights and fundamental freedoms, we sometimes shrink from the result. Take the expulsion of the Japanese Canadians from the Pacific coast in 1942. We not only interned them; our government tried, in 1945, to banish them to Japan; and refused to allow them to return to the Pacific coast until 1949. The U.S., though it expelled the Japanese Americans from the Pacific coast, did not try to banish them to Japan, and allowed them to return to the west coast even before the war had ended.

In recent years, however, it may be that we look rather better when such comparisons are drawn. In the 1950s, when McCarthyism disfigured the political landscape in the U.S. and washed over into Canada, the Supreme Court of Canada stood firm in defence of the rights of political dissenters.

In the 1960s, when thousands of young Americans left their country rather than fight in a war that they considered to be unjust, they fled to Canada. Here they were given asylum, and here thousands have remained.

In the 1970s, when Vietnamese of Chinese descent were expelled from Southeast Asia, drifting over the water in search of refuge, the world took them in. The largest number, quite naturally, were received by China. A very large number were received by the U.S. But it was Canada which took in 50,000, a larger number, on a per capita basis, than either China or the U.S. Indeed, Canada now has the world's highest ratio of refugees to total population: one in every 324 Canadians is a refugee.

So we can see a distinctive Canadian tradition emerging. How then to square this with the adoption of a Charter of Rights which many think of as a carbon copy of the U.S. Bill of Rights?

From *Law vs. Learning*, William Crawford, ed. (Ottawa, Canada: Canadian Legal Information Centre, 1989), pp. 91-100.

The U.S. Constitution and Bill of Rights were adopted in the late 18th century. The U.S. Bill of Rights is a classic statement of liberal ideas of *individual* rights, of the political and legal rights that appertain to individual liberty. In Canada these have been safeguarded by the common law, and have by and large been observed as faithfully here as in the U.S. Now they have been included (though not altogether entrenched) in the Canadian Constitution and Charter.

But even a cursory examination of our Constitution and Charter will show that it takes us much further than the U.S. Bill of Rights. For instance, our Charter provides that "the rights and freedoms referred to [in it] are guaranteed equally to male and female persons." The new Constitution includes provisions that reveal strands of Canadian federalism altogether distinct from the U.S. variety. The Charter enshrines the principles of equalization payments, that is, the redistribution of revenue among the provinces to ensure that Canadians in every province receive "reasonably comparable levels of public services at reasonably comparable levels of taxation."

Let me come, however, to those provisions of our Constitution and Charter which bear on my theme. These are the provisions offering explicit protection for the rights of minorities, provisions that reflect 20th century notions of human rights and fundamental freedoms. The rights of both of Canada's great linguistic communities have been recognized in the Constitution and charter. The special place of the Native people (the Indians, the Inuit, and the Metis) has been acknowledged. We have also acknowledged the multicultural dimension of Canadian society, and another provision of the Charter, which came into force on April 17th, 1985, guarantees to every individual the right to equality under the law and the right to the equal protection of the law "without discrimination based on race, national or ethnic origin, [or] colour."

In Canada we have two great societies, two nations, if you will, one English-speaking, one French-speaking. It would be a mistake to pretend otherwise. Yet we are mixed up together, and we have chosen to stay together. There are a million or more Native people in our midst, claiming a measure of self-determination, and millions of new Canadians—immigrants of every ethnic and racial background and every political and religious persuasion. Thus diversity is the essence of the Canadian experience. The Constitution and the Charter reflect this diversity.

Does this leave us with a constitutional hodge-podge: protection of languages here, over there guarantees for aboriginal peoples, and, as well, an affirmation of multiculturalism? No, these measures are the logical outcome of our history. If Quebec were to achieve independence, she would at once be faced with the very questions that confront Canada today: the rights of a great linguistic minority, the claims of the aboriginal peoples, and the place of numerous ethnic and racial groups in the life of the country.

The questions that minorities raise are not always easy to answer, and they are not always the same. Some minorities wish to integrate, some even to assimilate, and they fear that cultural distinctions will be used to exclude them from equal opportunities in political, social and economic life. Other minorities seek to defend and protect such distinctions, fearing that their erasure will lead to assimilation and the surrender of their identity. Diversity is anathema to the rulers of many modern nation-states. The government of such a state can be an instrument of repression, denying a minority the right to speak its own language, to practice its own religion, or to pursue a way of life that differs from that of the majority—in short, denying the members of a minority the freedom to be themselves.

It is our good fortune that we are not all of us of common descent, that we do not speak one language only. Our idea of who we are was not fixed in a single stirring encounter. We are not cursed with a triumphant ideology; we are not given to mindless patriotism.

We have had a national flag only since the 1960s. We cannot agree on the words of our national anthem. We have no national waxworks. To some, all of this is regrettable. But I think it is a good thing. There are, after all, 150 countries fully accoutered with flags and anthems, and millions ready to march in support of this or that spurious cause. Do we need any more?

We as citizens should be unwilling to fall into line whenever appeals are made in the name of a bogus patriotism; we must remember that there can be no unified idea of a national identity, for diversity is what freedom is all about. No free country can have a single, unified idea of itself; if it did, it wouldn't be free.

Diversity makes Canada a difficult country to govern. There is no easy consensus. It would be simpler if we all spoke the same language, if all our children went to the same schools, if we all held the same religious beliefs, if we were all of us white. But we are not. Such diversity should not terrify us, or provoke an epidemic of xenophobia. It is our strength, not our weakness.

Along every seam in the Canadian mosaic unravelled by conflict, a thread of tolerance can be seen. I speak of tolerance as a positive quality—not a mere indifference, but as the expression of a profound conviction about the virtues of diversity.

The crisis of times past have thrown up men and women who have articulated an idea of Canada that illuminates the Canadian journey. I want to cite the words of just a few of them, for they are more than ever relevant to our own time.

Wilfrid Laurier's career spanned three of the crises of the French-Canadian minorities in Canada. He was a back-bencher in the 1870s when the Acadians lost their claim to constitutional guarantees for public funds for their schools; he was Leader of the Opposition in 1890 when the Government of Manitoba denied the Roman Catholics (predominantly French-Canadian) the right to public funds for their schools and overrode the *Manitoba Act's* provisions that the province should be officially bilingual.

Laurier served as prime minister form 1896 to 1911. He was leader of the opposition again when, starting in 1912, Ontario sought to limit the use of French in the bilingual schools of that province. Ontario, confronted with pre-Confederation enactment, could not cut off public funds. On May 9th, 1916, he moved a resolution in the House of Commons urging the Legislative Assembly of Ontario not to interfere with the children of French-speaking parents being taught in their mother tongue. Laurier expressed his belief that every child in Ontario ought to be able to speak English. But he pleaded for the right of the children of French parentage to a second education in a second language. Here is Laurier, in his seventies, still able to summon eloquence and passion:

> Now I come to the point where I want to speak to my fellow-countrymen in the province of Ontario. When I ask that every child of my own race should receive an English education, will you refuse us the privilege of an education also in the language of our mothers and our fathers? That is all that I ask today: I ask nothing more than that. I simply ask you, my fellow-countrymen, British subjects like myself, if, when we say that we must have an English education, you will say: 'you shall have an English education and nothing else.' There are men who say that in the schools of Ontario and Manitoba there should be no other language than the English language. But, sir, when I ask that we should have also the benefit of a French education, will you refuse that benefit? Is that an unnatural demand? Is that an obnoxious demand? Will the concession of it do harm to anybody? And will it be said that in the great province of Ontario there is a disposition to put a bar on knowledge and to stretch every child in the schools of Ontario upon a Procrustean bed and say that they shall all be measured alike, that no one shall have the privilege of a second education in a [second] language?

Laurier was pleading for what he called "the regime of tolerance." But there were no guarantees for the use of French in the schools in those days. In the new Charter of Rights, however, there is a constitutional guarantee for minority language education rights. This provision can be the means by which the French language is maintained in the English-speaking provinces. (This is important not only to French Canadians. The preservation of French-language rights in the English-speaking provinces is in the long run likely to preserve the language rights of English-speaking Quebecers under the Charter.)

I have referred to the expulsion of the Japanese Canadians from the Pacific coast in 1942. This was not the result of a sudden manifestation of anti-Japanese feeling in British Columbia. The province had a long history of discriminatory legislation. Racism had been entrenched in the province's culture and enshrined in provincial statutes; indeed, in federal statutes as well. Waves of anti-oriental feeling had many times lapped at the homes of Japanese Canadians. Pearl Harbor generated a wave of anti- Japanese hysteria which was to sweep the Japanese Canadians away, to disperse them and to destroy their communities.

Throughout 1941, as war with Japan drew closer, Members of Parliament from British Columbia urged the federal government to take drastic measures against the Japanese Canadians. Only one M.P. from the province, Angus MacInnis of the C.C.F., defended the Japanese Canadians. Here is MacInnis speaking in the House of Commons on February 25th, 1941:

> If we are to have harmonious and friendly relations between the oriental population and the rest of our British Columbia citizens, we must stop discriminating against and abusing the orientals. We must find some common ground on which we can work, and I think it can be found. Is there any reason, if we should get into difficulties with Japan on the Pacific coast, why the Japanese in British Columbia should be interested in helping Canada, after the way in which we are treating them? I am satisfied that if we treat the Japanese and our other oriental citizens aright, we shall get their loyalty, because they are no longer orientals in the accepted sense of that term. They would feel as much out of place in Japan as we would. I know them, speak to them; I visit them and have them in my home, and I have not the slightest doubt that what I say is correct. If we are to avoid the troubles that other countries have had with racial minorities, then we must take a realistic view of the situation in British Columbia and attempt to make these people feel at home among us. We will secure their loyalty by fairness and kindness...

But when the war came, the clamour against the Japanese Canadians prevailed over the few voices that appealed to reason. All together, 21,000 people, three quarters of them born in Canada, were evacuated and interned. After the war, in 1946, the Government of Canada sought to revoke the citizenship of Canadians of Japanese origin and to deport them and their families.

But there were, at last, protests against the government's policy, and these soon spread throughout the country. On January 24th, 1947, Prime Minister King gave in. He announced that the government would not carry out its deportation programme. But by this time almost 4,000 evacuees, half of them born in Canada, had sailed for Japan.

It was not until 1949, four years after the war had ended, that the network of discriminatory legislation erected over the years by the federal and provincial governments was dismantled. The Japanese Canadians were free at last to take their rightful place in Canadian life.

Looking back, it is easy to condemn those who called for evacuation, internment, and deportation of the Japanese Canadians. But what would we do today if some other minority were the object of racial hatred? It is not enough to say that it won't happen again....

The provisions of the Charter of Rights...give minorities the confidence to speak out, to protest the violation of their freedom, and to assert their claim to rights we have all been taught they should enjoy.

The Constitution, the Charter, and the law do not, however, provide complete protection for racial minorities. It would be difficult to draft a statute that did. Equality for racial minorities depends, in the end, on the attitudes of the citizenry.

Let me now turn to an issue which has in recent years deeply engaged Canadians. I refer to the question of Native rights. This takes us back to the beginning of Canada's history, the occupation of a continent already inhabited by another race, with their own culture, their own languages, their own religion, their own way of life. The issue of Native rights is the oldest question of human rights in Canada and, at the same time, it is the most recent, for it is only in the last decade that it has entered our consciousness and our political bloodstream. In that decade, however, Canadian federalism has found it possible to embrace an expanding concept of Native rights.

It was not always so. The struggle of U.S. blacks, though a mighty event in U.S. life, is in its own way almost unique in this hemisphere. It was—and is—a struggle for equality through integration. On the other hand, the 500 year long struggle of the Native people of North and South America presents a quite different and in some ways more difficult issue: how to enable aboriginal peoples, as a collectivity, to remain distinct and yet contemporary peoples in the midst of dominant societies founded on European ideas of liberal democracy. Canada now acknowledges its obligation to address this issue.

This has happened because the belief of the Native peoples that their future lay in the assertion of their own common identity and the defence of their own common interests proved stronger than any had realized. When the suit brought by the Nishga Tribal Council of British Columbia to establish their aboriginal title reached the Supreme Court of Canada in 1973, all six judges who addressed the question supported the view that the Nishga's title had been recognized by English law in force in British Columbia at the time of the coming of the white man. In the judgment of Mr. Justice Emmett Hall in that case you will find that sense of humanity—that stretch of the mind and heart—which enabled the Court to look at the idea of native claims and to see it as the Native people see it:

> What emerges from the [...] evidence is that the Nishgas in fact are and were from time immemorial a distinctive cultural entity with concepts of ownership indigenous to their culture and capable of articulation under the common law having developed their cultures to higher peaks in many respects than in any other part of the continent north of Mexico.

In January 1981, all parties in the House of Commons agreed that the aboriginal rights of the Native peoples should, together with their treaty rights, be entrenched in the Constitution. This provision is now a part of the new Constitution. In 1983, the Penner Committee, comprised of politicians of all parties, recommended that Native governments be recognized as a third order of government in Canada. We have had a series of constitutionally-mandated conferences of first ministers, with Native participation, to address aboriginal rights and treaty rights.

To some, however, the entrenchment of the rights of the Native people is thought to be anomalous. Why should they have any rights not enjoyed by other Canadians? To provide a formal place within the Constitution for aboriginal peoples is said to be an affront to the conventions of liberal democracy. Yet we have taken an irrevocable step here too, acknowledging at last what the Native peoples have said all along, that they have the right to a distinct and contemporary place in Canadian life.

What could be more relevant to the contemporary world? In every country in North and South America there are aboriginal peoples who will not be assimilated, and whose fierce wish to retain their common identity is intensifying as industry, technology and communications forge a larger and larger mass culture, excluding diversity.

The recognition of such "anomalies" may in time constitute Canada's principal contribution to the legal and political order. Constitutional protection of French and English makes the way easier for other languages, because it negates the idea of a monolithic culture. In the same way, the guarantees to the Indians, the Inuit and the Metis exemplify the Canadian belief in diversity. In this way the interests of the two linguistic communities, and of the aboriginal peoples, merge with the idea of multiculturalism. it is not just a question of minority rights, but a question of the health of the body politic....

Questions of human rights in Canada are linked to questions of human rights around the world. Our own successes and failures, our own attempts to accommodate minorities, are important not only to ourselves. If people of differing races, religions, cultures, and languages can live together harmoniously within a federal state embracing half a continent, perhaps they may learn to live together harmoniously in the wider world.

The Charter does not resolve these great questions of human rights and fundamental freedoms. In a sense they are never resolved. But the Charter does offer minorities a place to stand, ground to defend, and the means for others to come to their aid. The Charter is (to adopt a phrase of Professor W.R. Lederman's) "a [...] landmark on a continuing journey, but it is in itself neither a beginning nor an end."

I believe that journey is a journey towards the regime of tolerance that Laurier dreamt of, towards a nation—and a world—where diversity is regarded not with suspicion, but as a cause for celebration.

As F.R. Scott, a Canadian who was at once one of our finest constitutional lawyers and one of our finest poets, said: "If human rights and harmonious relations between cultures are forms of the beautiful, then the state is a work of art that is never finished."

The Maritimes

The four Atlantic Provinces have been settled longer than any other part of Canada. Both British and French explored and settled in Nova Scotia and New Brunswick. The French-speaking Acadians who lived in Nova Scotia were persecuted by the English and exiled to the Southern states just after the Battle on the Plains of Abraham, which ensured British supremacy in the colonies of Canada. As a result, even in this predominantly English-speaking part of Canada, there is deep-rooted resentment between the English and French citizens who live mainly in New Brunswick.

Newfoundland and Nova Scotia rely primarily on the fishing industry. Fish are difficult both to catch and to market. Fishing is a seasonal occupation and fishermen rely both on federal government subsidies and unemployment insurance to support their families and communities. Prince Edward Island has an economy based on agriculture and tourism and depends on the federal government to provide the ferry service that makes the Island a viable part of Canadian society. New Brunswick's economy is based on light industry, coal mining, and agriculture. Its markets are in central Canada.

* * * * *

Each student in your group gets one of the following role cards. Their task is to come up with one fundamental human right most important to the people they represent.

1. You represent people who rely on the fishing industry in the Maritime Provinces. "Fish stocks are down and the future looks bleak. The people here have to rely on government assistance six months of the year. European fishing boats pull more fish out of the waters near Canada than we do, but the government doesn't seem to be doing anything about that. We deserve a decent living, but there isn't anything else for us to do but fish."

2. You represent farmers in the Maritime Provinces. "Farmers have always gotten the short end of the stick. Governments determine the prices we get for the food we grow, and most of the time this isn't enough to live on. Maritime farmers also have to compete with cheap produce from the United States. Our kids are moving to the city to find jobs because they can't afford to stay on the farm. Something has to be done to protect our rights."

3. You represent the one million residents of the Maritimes who speak French. "It's tough being in a minority. Our kids have to go a long way to get to a French school. The provincial government doesn't like to deal with us in French and we need to take a translator with us when we have to go to court. It's just not fair; my family has been living in Nova Scotia for 200 years and we want our children to be part of a French culture."

4. You represent the one million English-speaking business and professional people living in the Maritimes. "We want to set up more businesses and manufacturing plants here. We need more jobs and more universities so our children don't have to go to Ontario to get a higher education and opportunities to work in the professions. Why should Central Canada get all the breaks? We pay taxes too."

Quebec

Six million people live in the province of Quebec. Four million are French-speaking; most of their families have lived in Quebec for generations. With the growth of the cities and the influx of industry, Quebec society has been transformed. French cultural traditions are more important than ever, and much antagonism has been built up against English Canada. The movement to separate from the rest of Canada culminated in the F.L.Q. (Front for the Liberation of Quebec) crisis in 1971. Separatist feelings have been running high ever since. Laws have been passed to protect French language and education rights. All immigrants to Quebec must enroll their children in French schools unless both parents went to English schools. All signs outside businesses in Quebec must be in French only. A concern with these new laws is that the rights of minority populations in Quebec and across Canada have been threatened. Quebec refused to sign the Constitution Act and has maintained that it will not enter as a full partner in the confederation until a number of demands have been met. Other provinces have refused to agree to these demands. At this point, separation from Canada is a very real possibility.

* * * * *

Distribute the following role cards to the students in your group. Their task is to come up with six fundamental human rights most important to the people they represent. Three students share role 1; roles 2, 3, and 4 should be given to the other three students in the group.

1. Three million residents of Quebec speak French as their first language. "My loyalties are with Quebec. We don't want any part of English Canada. We've been treated like the poor cousin for too long. Quebec is strong; we can go it alone. Almost everyone we know wants to separate from Canada and become a sovereign nation."

2. Approximately one million immigrants have moved to Quebec from all over the world. "We chose Canada as a land where our children could live in peace, learn to speak English, and have the opportunities we could not provide for them in our homelands. Instead we find that our children must go to French schools where they are taught in French; most businesses are French. This is a good country, but I'm wondering whether Quebec was the right choice.

3. One million residents of Quebec are English—many from wealthy, established families. Most live in Montreal, Quebec's largest city. "I'm feeling threatened by the Quebec government and their determination to wipe out the use of English here. That won't be good for businesses that deal with the rest of Canada. Many industries will leave. I've been thinking about moving to English Canada, but that would be a great sacrifice for my family; this is our home."

4. The 100,000 Native people in Quebec have not been well-represented in the province. "We cannot accept that white people in Canada tell us how we should live our lives. Nor do we want to be forced to become part of an independent Quebec. Our ancestors were here thousands of years before Europeans settled in Quebec. It is time that white people stopped claiming this country as their land. We are the first nations people and we should be allowed to live according to our own customs and laws."

Ontario

Ontario is the financial and industrial center of Canada. With a population of eight million, it is a powerful political force. It provides the largest market for the goods produced in the rest of Canada and supplies vast amounts of manufactured products to the other provinces. It draws the greatest number of foreign investors and is home to the branch plants of the large U.S. car manufacturers. The national capital, Ottawa, is located in Ontario. Ontario's power and influence are often the source of some resentment from the people of the other regions. In the early years of Confederation, Ontario secured for itself a favored status. For example, freight rates out of Ontario to the West were considerably lower than freight rates from the West to Ontario. This meant that it was economically easier to ship manufactured products to the West than it was to ship them the other way. Thus, industry was encouraged to settle in Ontario rather than the West. Recently this situation has been changed, but the bad feelings have long alienated the other regions. Because it has the largest population, Ontario continues to have the most influence in the national government, both in the House of Commons and the Senate.

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Distribute the following role cards to the students in your group. Their task is to come up with the eight fundamental human rights most important to the people they represent. Six students share role 1; roles 2 and 3 should be given to the other two students in the group.

1. Six million residents of Ontario are English-speaking and earn their living in manufacturing, mining, and agriculture. "Life is good for most of us, especially those living in the southern parts of the province. We enjoy one of the highest standards of living in the world. But our wealth is supporting all the down-and-outers in the rest of the country. Let's do away with all those expensive social programs. If people can't make a living in Newfoundland, maybe they should go somewhere else. There's no way we should have to pay their bills. As for all those immigrants who want to come to Ontario to get rich quick—we are better off without them."

2. One million people in Ontario are French; most of them are located in small rural communities. "We have a distinctive culture and traditions that make us more comfortable with the people of Quebec than other Ontarians. But there have been some concessions. We have a separate school system that is supported by the government. Sure we have to live with a lot of prejudice from the Anglais, but no place is perfect. If Quebec separates from the rest of Canada though, where will that leave us? Sure I like Canada, but I'm French!"

3. One million people in Ontario are from various ethnic groups who have arrived in the past 40 years. Many of them are in the big cities, working in the steel plants and service industries. "Sure, I have to work hard, but the job is steady and I feel safe here. You bet, life is good in Canada. My kids go to school and they can to go university if they study hard. If I can go to my own church and vote for people who will represent us in government, what more could I want? This is a wonderful country. We should do everything we can to keep it this way."

The Prairies

Primarily rural, Manitoba, Saskatchewan, and the North West Territories have a relatively small population that depends on grain farming as its major resource. Joining Confederation in the 1890s because of the promise of a railroad and settlement of land claims with the Native Indians, the area was settled by European immigrants who claimed large parcels of land and established farms. It was a difficult life made even worse by the Depression years. Now with the price of grain falling on world markets, the region is trying to encourage new opportunities. Residents rely on the federal government to provide financial incentives and investments, but current trade polices have put the region in direct competition with American goods. Lots of the region's people are moving West, where the climate isn't so harsh and there is work. Residents feel the government must do something for the farmer. If farmers don't make it, nobody else will.

* * * * *

Distribute the following role cards to the students in your group. Their task is to come up with the three fundamental human rights most important to the people they represent. Two students share role 1; the third student in the Prairies group should be given role 2.

1. Two million of the people of the Prairies region trace their ancestry to Eastern Europe; their grandparents fled to escape oppression, hardships, and war. They never had much and so could manage on the cold and dry prairies. "As long as there was land and we could make it produce, that's all it took to make us happy. But now it takes a lot of land to support just one family, and the equipment is so expensive. You have to mortgage the land just to keep the machinery going and seed in the ground. And you just can't count on the weather anymore. When those big foreign investors offer to buy up the farms, what can a guy do? I'm not sure I want this kind of life for my kids. Maybe they are better off in the big city. Canada's a great country, but I gotta keep bread on the table; the way things are going, I'm not sure I'll be able to do that much longer."

2. Many people in the Prairies region are Native Indian and Metis (descended from mixed French and Native Indian ancestry). "We've been here for centuries. Our great-great grandparents traded furs and hunted buffalo on this land. It belongs to us. Most of us have settled on farms, but that's not the way it used to be. The whole land was ours; we hunted and trapped and wandered from one place to the other to find our food. It was a good life back then. Now we live on reservations, collect government welfare—our kids don't even know who they are. They're into drugs, drink—they've got no self-respect. Something has to be done. The white man's ways don't work for us. We want to be free to govern ourselves, to live in our own way. The government owes us that much. They've taken our land and left us with nothing."

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The West

Comprised of the resource-rich provinces of Alberta and British Columbia, plus the Yukon Territory, the West is prosperous and aggressive in defending its rights as an important region of Canada. Large deposits of oil and natural gas in the north have contributed to Canada's being self-sufficient for power. Agriculture, forestry, fishing, and mining are the other primary industries. The West has an abundance of water and opportunities for hydroelectric power. It has important trading connections with the Western United States and with the countries of the Pacific Rim, especially Japan. The region is trying to encourage high-tech industries and foreign investment but is subject to political instability. Two political parties vie for power in the most western province. One focuses on business and industrial development at the price of diminishing resources and the other is primarily concerned with the social welfare of the people. One important area of concern is the settlement of the land claims of the Native peoples. Unless they are satisfactorily resolved, the prosperity and security of this area will be jeopardized. The region does not rely as heavily on the rest of Canada as it once did, so the threat of Quebec separating is not of paramount importance.

* * * * *

Distribute the following role cards to the students in your group. Their task is to come up with the four fundamental human rights most important to the people they represent. Two students should share role 1; roles 2 and 3 should be given to the other students in the group.

1. Two million of the residents who came to the region are descendants of British and American immigrants to Canada in the first half of the century. They settled farms in Alberta and central British Columbia and built the cities on the West Coast. Discoveries of gold in B.C. and the Yukon brought many others, who decided to stay in the northern communities. Northern Alberta attracted others in search of black gold, or oil. The people prospered and began to feel detached from the rest of the country. "We joined because they promised us a railroad, but that's not so important anymore. Now, we have more ships coming from and going to Japan than we do trains to and from Ontario. We've got it made out here, and Canada isn't what it used to be. We've got new trading partners—maybe it's time to look at a new arrangement."

2. One million residents of the West came from Asia, some at the end of the last century when they were encouraging immigration of young Chinese men to build the railroad and some more recently from prosperous Japanese and Hong Kong families. "We like the freedom and many opportunities that the West offers us. We have communities where we can speak our language and enjoy our own traditions. There was a bad time during the War when we Japanese were treated very badly by Canadians, but that is in the past now. We have a bright future here."

3. Many Native Indians live in Alberta and British Columbia. Native Indians in the West spring from the most highly developed Native cultural group in the Western Hemisphere. Theirs was a proud nation until white immigration overran their traditional hunting and gathering territories. "Our people never settled with the Whites, never signed treaties, and never received compensation except for the miserable little reserves where our people starve and grow rebellious. We must have satisfaction for our claims, and we must have it soon. If we fail in the courts, if the Provincial government continues to refuse to listen to us, there will be trouble."

6 FREEDOM OF EXPRESSION: TEACHERS' RIGHTS

Introduction: Commitment to freedom of expression often requires tolerance of certain undesirable behaviors to protect the society from a greater evil. This activity invites students to consider the tradeoff in the context of a Canadian case involving a teacher charged with promoting racial hatred.

Objectives: Students will be able to:

1. Identify the reasons for and against prosecuting those who spread hate propaganda.
2. Critically assess their own positions on the most appropriate legal way of dealing with the problem of racist propaganda.

Materials: Copies of Handouts C-14 and C-15

Time Required: 2 class periods

Procedure:

1. On the chalkboard, draw a horizontal line as long as you can make it. At one end, write "Speech should never be limited in a free society." At the other end, write "Even in a free society, limitations on speech can be justified for several reasons." Ask for volunteers to come to the front of the class and position themselves along the line to show their positions on the issue. Make sure that there is some variety in the opinions shown. Allow a few minutes for students with varying views on the issue to share the reasons underlying their positions.

2. Tell students that this lesson will give them a chance to sharpen their thinking on the issue of limits on free speech through a detailed examination of a case study involving a Canadian teacher. Share the following background information on the case with the students:

> The case of *The Queen v. Keegstra* involved a high school teacher named James Keegstra. As the main component of his high school history course, Keegstra taught that the Holocaust committed against the Jews in Hitler's Germany was a hoax and part of an international Jewish conspiracy to take over the world. He also taught that Jews were responsible for such events as the French Revolution, both world wars, the Russian Revolution, and the Great Depression. After a number of students and parents complained about the teacher, he was suspended from his duties and eventually dismissed. He challenged the dismissal in the Appeal Court of Alberta, which found that the school board had acted in a lawful and reasonable manner because the teacher had refused to comply with the provincial social studies curriculum. But the case did not end there. The province of Alberta decided to prosecute James Keegstra, charging him with an offense against the Criminal Code for willfully promoting hatred against an identifiable group. Keegstra used the Charter's freedom of expression provision in his defense. The case eventually reached the Supreme Court of Canada.

3. Divide the class into groups of three students and distribute copies of Handouts C-14 and C-15. Ask students to read the opposing arguments found in Handout C-14 and discuss the case of *The Queen v. Keegstra*. Following their discussion, group members should fill out Handout C-15 to summarize their findings.

4. Organize a class debate on the question of whether an individual who spreads hate propaganda should be prosecuted on criminal charges.

5. Following the debate, announce to the class that the Supreme Court of Canada decided in 1990 that while Mr. Keegstra's right to freedom of expression was infringed upon, it was a reasonable limitation of his right and therefore not in violation of the Charter.

6. As an evaluation exercise, you might ask each student to write a paragraph explaining why he or she agrees or disagrees with the Supreme Court decision.

Extension/Enrichment:

Assign students to research similar cases in the United States. Based on their research, do they think U.S. courts would have reached the same decision as the Canadian courts? Why or why not?

FREEDOM OF SPEECH—WHAT ARE THE LIMITS?

Michael F. Elterman

Freedom of speech should not include the freedom to spread hatred through antisemitic hate literature. Antisemites and Neonazis argue that they have a right to express their opinions as if the right to free speech is an absolute right in a democracy. This is a convenient oversimplification. We do not have absolute rights in a democracy. The law books are full of laws against slander, libel, and the spreading of false news. One cannot, for example, shout "fire" in a crowded cinema if there is no fire, nor can one advocate the violent overthrow of an elected government and claim freedom of speech.

Among the purposes of law are to promote "the public good," to promote peace in the society, and to ensure that a minority does not have to live in fear. The public good is served when there are laws preventing the spread of hatred against an identifiable group. This is the purpose behind Section 281 of the Canadian Criminal Code. Hate literature is a destructive, divisive influence in our society and destroys and undermines the spirit of cooperation and tolerance in the wider community.

Antisemitic groups claim that they have a right to express their honest "opinions" and they they are not willfully spreading hatred. Let me quote from Jean-Paul Sartre's book *Antisemite and Jew* (1948): "If a man attributes all or part of his own misfortunes and those of his country to the presence of Jewish elements in the community, if he proposes to remedy this...by depriving the Jews of certain of their rights...by expelling them from the country, by exterminating all of them, we say he has antisemitic 'opinions.' This word 'opinion' makes us stop and think. It is the word a hostess uses to bring to an end an (acrimonious) discussion. It suggests that all points of view are equal; it reassures us, for it gives an inoffensive appearance to ideas by reducing them to the level of tastes... In the name of (democracy), in the name of freedom of opinion... But, I refuse to characterize as opinion a doctrine that is aimed directly at particular persons and that seeks to suppress their rights or to exterminate them...Antisemitism does not fall within the category of ideas protected by the rights of free opinion" (pp. 7-11).

The irony, of course, is that it is specifically those groups who try to hide their prejudice under the guise of freedom of speech who, should they gain political power, would immediately cut off our freedom of speech totally.

The Jewish Community Relations Committee of Canadian Jewish Congress has, for a long time, been faced with a painful dilemma: should the community try to stop antisemitic, Neonazi, and historical revisionist speakers from having a platform from which to spout their ideas? The dilemma centres on whether we (1) want to stop the spreaders of hatred from disseminating their message, or (2) don't want to risk being labelled as censors of free speech and undemocratic. There is a widely-held belief among antisemites that a Jewish world conspiracy exists and that Jews control the media. When we attempt to prevent them from speaking, this is interpreted as proof of our desire to control Canadian public opinion. Antisemitic speakers and groups who disseminate antisemitic and/or historical revisionist literature hide behind the facade of the "motherhood" issue of free speech.

As a group of Jewish people, among us survivors of the Holocaust, do we not have the "right of freedom from hatred?" Do we not have a right to live in a society free from the fear of anguish caused by hate literature? Of course we do.

From *Jewish Federation of Greater Vancouver Magazine* (January 1988). Used by permission of the authors.

Marvin N. Stark

It is impossible for any thoughtful Jew not to feel the indignation expressed by Michael Elterman, when faced with what he perceives to be antisemitic hate literature. For that matter, most people resent and experience insecurity from any attack on their basic values.

The question may be, however, whether such indignation or insecurity is sufficient cause to silence the publisher of those kinds of attacks, or whether the more effective way to deal with the provocators is to openly and aggressively refute and rebut their statements and assertions. Thomas Paine once said in a letter to "My Fellow Citizens" that "the most formidable weapon against errors of every kind is reason. I have never used any other and I trust I never shall."

John Stuart Mill in his paper "Liberty of Thought and Discussion" said, "But the peculiar evil of silencing the expression of any opinion is, that it is robbing the human race; posterity as well as the existing generations; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose what is almost as great a benefit: the clearer perception and livelier impression of truth, produced by its collision with error."

Clearly freedom of expression is not an absolute freedom in a democracy. It is my sense, however, that in every society that cherishes freedom of expression the line is drawn not to restrain the content of another's expression, but rather to deal with the wrongful effect in offending or threatening to offend the public policy of his society. For example, it is not the content of shouting "fire" in a crowded theatre that is the offence, but the likelihood of causing a panic when there was no reason to suspect there was a fire. Similarly, one should note in Michael's quote from Sartre that he was concerned with the proposal to deprive Jews of certain of their rights rather than asserting that certain personal and national misfortunes are a result of the presence of Jewish elements.

It is not what one says that bothers me so much—but rather its effect. If what is said causes or promotes or advocates wrongful conduct as defined by our society, and/or what is said is false and interferes with public order because it is or has a reasonable chance of being believed, then those are the offenses that my society should deal with.

It is easy to prescribe malevolent motives to those who profess views that we consider bizarre and fallacious, and conclude that they know their views are not true or do not care whether they are true or false and quite another thing to convince bystanders and listeners of those malevolent motives. To quote once more from John Stuart Mill, "...But all this, even to the most aggravated degree, is so continually done in perfect good faith, by persons who are not considered ignorant or incompetent, that is rarely possible on adequate grounds conscientiously to stamp the misrepresentation as morally culpable; and still less could law presume to interfere with this kind of controversial misconduct." It is precisely because of this difficulty that I would rather err in favour of complete freedom of speech rather than in restriction, provided that the exercise of that freedom does not cause, promote, or advocate wrongful conduct as defined by our society." In this context a quote from a 1951 Supreme Court of the United States Judgment in *Feiner vs. New York* might be relevant— "...there was no evidence which could lend color to or claim that the acts of the police were a cover for suppression of (Feiner's) views and opinions. Petitioner was thus neither arrested nor convicted for the making of or the content of his speech. Rather, it was the reaction which it actually engendered."

PROS AND CONS

Drawing on the arguments presented by Elterman and Stark and on your own opinions, list the reasons for and against prosecuting people like James Keegstra.

Reasons For	Reasons Against

7 SEARCH AND SEIZURE: STUDENTS' RIGHTS

Introduction: Do fundamental rights apply to students? In this activity, students consider how the right of privacy, the freedom from unreasonable search and seizure, and the right to due process apply to students suspected of an offense. They first examine a hypothetical Canadian case; they then read the actual case on which it was based and consider a leading U.S. case on the topic.

Objectives: Students will be able to:

1. Identify the legal issues raised by a case involving the searching of students.
2. Critically assess whether existing rights of privacy for students are adequate.

Materials: Copies of Handouts C-16 through C-18

Time Required: 2 class periods

Procedure:

1. Provide students with copies of Handout C-16, allowing time for them to read the material. Then conduct a class discussion of the questions provided with the reading. Responses to these questions developed by Steve Talos, the author of the case, are given below. You may find these responses useful, in that they provide a Canadian response, as well as some arguments that may help stimulate student comment.

Question 1. The issues in this case may be grouped under three major classifications:

Constitutional: Legal issues requiring additional judicial interpretation and clarification in applying the Canadian Charter of Rights and Freedoms to school boards and officials, and where these Charter protections may apply to students in cases of arrest, search, and seizure. Constitutional issues involved in the case include the following:

Are Boards of Education and school officials private or public individuals for the purpose of applying the Canadian Charter of Rights and Freedoms?

Are students afforded constitutional protections and guarantees under the Canadian Charter of Rights and Freedoms as other citizens in our society are?

What constitutional protections may Jimmy Seller and John Head have under the Charter? Specifically, were the students placed under proper arrest? Did they have the right to retain and instruct counsel without delay? Were the students arbitrarily detained or imprisoned? Were the students deprived of due process, that is to say denied liberty and security of the person, in accordance with the principles of fundamental justice?

Are students afforded the "same" constitutional protections and guarantees under the Canadian Charter of Rights and Freedoms as other citizens in our society?

Does the *in loco parentis* doctrine exclude school officials from the dictates of the Charter sections?

Criminal: Legal issues involving the adherence of school officials to substantive and procedural law set out in the Criminal Code with respect to arrest, search and seizure, and the Young Offenders Act with respect to the admissibility of statements. Criminal issues involved in the case include the following:

Must the procedures for making an arrest set out in the Criminal Code be stringently followed by school authorities?

Upon what grounds can an arrest be made? When would the teacher be civilly liable for false arrest?

Does a student need to be under arrest before he/she can be lawfully searched?

How much force can be used to effect an arrest according to the Criminal Code?

When are statements by a student to a principal or teacher considered voluntary and thus admissible against the student?

Under what circumstances does a principal or teacher illegally detain or falsely imprison a student?

Civil: Legal issues involving the potential for lawsuits where the substantive and procedural criminal law were inappropriately executed, as, for example, in cases of false arrest, imprisonment, or assault. The civil issues involved in this case are a spin-off from the issues emerging from the criminal and constitutional matters. These issues may dictate whether a student has the legal right to initiate a cause of action against one of the members of the educational family. What distinction exists between the *in loco parentis* right to use force for the purpose of correction, and when is it deemed to be assault and battery? At what stage does a search become illegal?

Question 2. There are a number of legal actions, both civil and criminal, that could potentially arise from this case study. These are as follows:

Head, student, may be charged criminally with simple possession of marijuana.

Mr. Cleaver, teacher, may be charged both criminally and civilly with assault.

Mr. Bismark, principal, and Mr. Cleaver, teacher, may be sued for undertaking an illegal search.

Mr. Cleaver could be sued for false arrest and imprisonment.

Question 3. With respect to the first legal action mentioned above, Head's lawyer would likely raise the defense that Head had not been afforded the protections of the Charter, including such protections as the right to counsel and the right to be warned about making self-incriminating statements. The admissions made by Head are unlikely to be classified as those mentioned in the Young Offenders Act, in which oral statements made spontaneously to a person in position of authority are considered admissible. Head was being choked by Mr. Cleaver when he blurted out that he would tell him about the dope if he let him up, and Mr. Bismark's threat to call the "cops" unless the boys "came clean" prompted Head to blurt out, "What's half a joint?" Thus, the actions of the teacher and principal would probably be sufficient to constitute forms of physical or mental duress. No marijuana was found or discovered on the person of either Seller or Head at the time of the search. This would substantially weaken any case the Crown might have to present. With nothing more to rely upon beyond Mr. Cleaver's sense of smell and his testimony that he thought he recognized the acrid odor of marijuana, and with the frail chance of Head's confessions being ruled admissible, I venture that the Crown would not be able to prove beyond a reasonable doubt the guilt of the youthful offenders.

With respect to the second case above, Mr. Cleaver's prime line of defense would be built upon the Education Act and the Criminal Code. According to the Education Act, school officials have a statutory duty to "maintain proper order and discipline." By virtue of the common law doctrine of *in loco parentis*, school officials may use force for the purpose of correction so long as it is reasonable under the circumstances. Whether the force applied in administering punishment was reasonable or excessive is a question of fact, to be determined in light of the circumstances of each case. In our case situation, the circumstances would suggest that Mr. Cleaver was acting responsibly within his statutory obligation of maintaining proper order and discipline. No physical evidence exists to suggest that he employed an excessive or an inordinate amount of force for the purpose of restraining Head, who was openly defiant.

Regarding the third possible legal action, Bismark and Cleaver, in their defense, would argue that the *in loco parentis* doctrine delegates to them the authority to stand in place of a parent for the purpose of discipline and protection, and the right to perform a search springs from their educational obligation to maintain discipline and order in the school. Applying the twofold test set down in a Canadian case as to when a search by school officials might be reasonable: (a) was it justified at its inception and dictated by the circumstances and (b) was the search excessively intrusive? One might conclude with some degree of certainty that the search satisfied those criteria.

Regarding the final possible legal action, Mr. Cleaver failed to adhere to the formal procedures in making an arrest. In his defense, it would be argued that the Criminal Code establishes protection from civil lawsuit on the basis that he acted on reasonable and probable grounds, even though he may have actually exceeded his authority. Once again the *in loco parentis* doctrine and the right of the teacher to maintain proper order and discipline in the school would be employed in Mr. Sellers' defense.

Question 4. Someone once wisely remarked, "The best defense is a good offense." I believe this approach should be taken in this situation. I would therefore suspend Head from school for a period of three days and Seller for one day. This is within my discretionary power without notifying the Board. I would suspend them both because both had acted defiantly and disobediently in resisting the authority of Mr. Cleaver when he requested to speak to them after observing them hurrying from room 203. Mr. Cleaver had acted quite appropriately in demanding that the boys stop so that he could question them. He smelled burning marijuana, and the boys appeared to be up to something at the time.

Prior to suspension I would personally notify their parents. They would be informed of the reasons why their children were being placed under suspension. The parents would then be given notice and the reasons in writing.

The police would not be called. The principal has an obligation standing in the place of a parent to protect the interests of the students. The teacher may have significantly different interests in a search than a parent. Quite often the *in loco parentis* doctrine lacks the genuine parental protective concern for the student who is threatened with school authority. The use of force must also be tempered by understanding and love based on a close personal relationship as demonstrated between a parent and child.

2. Next, give students copies of Handout C-17, which describes the actual case on which the Head and Seller case was based. Does the information about this case change their thinking with respect to any of the questions discussed above? Why or why not?

3. Distribute Handout C-18, which presents a leading U.S. case on the issue. Conduct a class discussion of the questions provided with the case.

4. Conduct a debate on the question of whether students *ought* to have more protection for their right to privacy, freedom from unreasonable search and seizure, and right to due process. You may want to have students do additional research before conducting the debate.

THE HEAD AND SELLER CASE

During lunch hour, Wally Cleaver, a physical education teacher at Inner City Collegiate, was walking down the corridor of the school when he thought he recognized the smell of marijuana coming out of room 203, the chemistry lab. Just at that moment, he was almost barreled over by Jimmy Seller and John Head, who were hurrying out of the room. Cleaver ordered the boys to stop and asked them what they were doing in the room. "Nothin'," said Head. "Just messing around," offered Seller. When the boys began to walk away, Cleaver ordered them to return to room 203. "Why, man?" sneered Head. "We haven't done nothin' wrong." Cleaver grabbed Head and shoved him towards the open door. A struggle ensued between Cleaver and Head, and the two fell wrestling to the floor, with the teacher, who was about 30 pounds heavier, ending up on top. Seller, who it turned out was Head's older stepbrother, grabbed Cleaver around the neck and attempted to pry the teacher from the other student. Mixed among the cursing that Head was directing at Cleaver was the claim that he was being choked and the suggestion that, "If you let me up, I'll tell you about the dope."

Just at that point, Mr. Bismark, the principal, arrived on the scene. He was a mountain of a man, standing 6 feet 6 inches and weighing 260 pounds. He soon broke up the scuffle and ordered everyone into room 203. Over the students' protests, he grabbed them by the scruff of their necks and shoved them into the room. He ordered them to "sit down and don't move 'til you're told to!" He and Cleaver moved to the front of the room, where they huddled to discuss what had happened. After about ten minutes, Bismark and Cleaver returned to the boys. "All right, come clean!" ordered Bismark. "Or do you want to tell your story to the police?" Over Seller's protests, Head blurted out, "What's half a joint, man?" Head finally took his stepbrother's cue and stopped talking.

Getting no further response from either student, Bismark told them to empty their pockets. Neither boy moved to comply so Bismark searched Head's pockets while Cleaver searched Seller. Finding nothing, the two teachers went to a corner of the room to discuss what to do next. Head yelled at them, "My old man's lawyer's gonna sue you!"

1. What are the legal issues raised by this case?
2. What possible legal action could arise out of these facts?
3. What defenses could be raised?
4. If you were Mr. Bismark, what would you do next?

Adapted from "Who Said Students Have Equal Rights?" by Steve Talos, *Law vs. Learning*, William Crawford, ed. (Ottawa, Canada: Canadian Legal Information Centre, 1989).

THE CASE OF RONALD SWEET

Ronald Sweet was an 11th-grade student at Central Algoma Secondary School in Sault Ste. Marie, Ontario. On November 20, 1985, three of the school's teachers smelled marijuana in a classroom. They confronted Sweet and two other students they believed were smoking marijuana during the lunch hour. The teachers told the three students to stay in a hallway until the school's vice-principal arrived. The teachers did not tell the students why they were being detained.

Sweet said that he had not done anything wrong and was going to leave. The teachers repeated their order to say in the hallway. Hearing a commotion, a teacher named Michael Entwistle came into the hall to see if he could help. Sweet again stated that he was leaving. A scuffle then broke out between Sweet and Entwistle, with both falling to the floor. Sweet got up off the floor and left the school.

At Sweet's trial for assault causing bodily harm, two different accounts of the scuffle were given. Entwistle testified that as Sweet began walking away, he pushed Entwistle out of the way. Entwistle then ordered him to stop and Sweet responded by elbowing the teacher in the stomach. The two then struggled, with Sweet biting Entwistle on the hand as they fell to the floor.

Sweet admitted trying to walk past the teachers who were blocking the hallway, but he denied pushing or elbowing Entwistle. He said the scuffle broke out because Entwistle grabbed his neck from behind. He argued that he was justified in using force to resist because the teachers had violated three of his Charter rights: the right to liberty and security of the person, the guarantee against arbitrary detention, and the right to be promptly informed of the reasons for his detention.

In justifying the District Court's ruling against Sweet, Judge Vannini made the following points:

- The common law and the Criminal Code both recognize that school authorities have a right to discipline pupils, including by detention.
- Ontario's Education Act gives school principals and teachers the duty to maintain "proper order and discipline in schools"; it also means that students have a duty to accept discipline.
- The teachers had "reasonable and probable grounds" for believing Sweet and the other two students had been smoking marijuana, a clear violation of school rules. Thus, asking the students to wait for the vice-principal was "eminently reasonable."
- According to a decision in *R. v. James Michael G.*, detention in the school does not fit the meaning of "detention" in the Charter. Thus, the teachers were not required to tell the students the reason for their detention, although the judge said "it would have been reasonable and preferable if they had."

NEW JERSEY V. T.L.O.

In *New Jersey v. T.L.O.* the U.S. Supreme Court held in 1985 that school administrators and teachers may search students without first getting a warrant so long as they have "reasonable grounds" to believe they might uncover a violation of law or school rules.

The opinion of the court prompted three different concurring opinions and three strong dissents. The majority decision, which in essence fashions a new Fourth Amendment standard specifically for student searches, contained some good news for both students and school officials.

In *T.L.O.* the Court held for the first time that students are entitled to rights and protections offered by the Fourth Amendment. But school officials had even more cause to rejoice. The court held that school officials must be allowed leeway in the interest of maintaining a well-ordered atmosphere for learning. In defining just what is "reasonable" in the specialized setting of a school, the court balanced the need to maintain discipline against the individual student's legitimate expectations of privacy which attach to "non-disruptive yet highly personal items" such as photographs, letters, and diaries. And so, the Court spelled out what it deemed to be a standard that would neither unduly burden school authorities nor authorize unrestrained intrusions upon school children's privacy. "A search of a student by a teacher or school official will be justified at its inception," held the Court, "when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."

Justices Powell and O'Connor filed a separate concurring opinion which agreed generally with the Court's opinion but emphasized that students within the school have lesser expectation of privacy, and thus fewer constitutional protections, than adults and juveniles outside the school.

Justice Blackman also basically agreed with the Court's decision, but wrote a separate opinion of his own. In it, he emphasized that while he agreed with the "reasonable grounds" standard announced by the Court, the balancing test approach must be cautiously looked at as an exception and should not be considered the norm. Elementary and secondary school settings, according to Blackmun, present the special needs that justify a departure from the usual requirements of probable cause needed for searched.

Justices Brennan and Marshall agreed that the Fourth Amendment should apply in schools, but wrote that the Court's new "reasonableness" standard is an "unclear, unprecedented and unnecessary departure from generally applicable Fourth Amendment standards." They feared that the new school search standard is likely to "spawn increased litigation and greater uncertainty" among school officials confused and constrained by an overly broad single standard that attempts to govern all school searches.

Justice Stevens filed a separate dissent in which Brennan and Marshall partially joined. The Court, Stevens concluded, erred in deciding a constitutional question based on the trivial pursuit of a smoking infraction. Stevens offered a standard he deemed "better attuned" to the current way of life in the United States schools. School officials should be allowed to search students, according to Stevens, "when they have reason to believe that the search will uncover evidence that the student is violating the law that is seriously disruptive of school order, or the educational process."

From "Supreme Court Dockett: Did the Fourth Amendment Go up in Smoke?" by Barbara Kate Repa, *Social Education* (April 1985), p. 266. © National Council for the Social Studies. Reprinted by permission.

Most feel strongly about both the need for some type of order in our public schools and the need to guard individual expectations of privacy. Still, very few—even very few of the Supreme Court Justices—can best be brought together. What *New Jersey v. T.L.O.* has done is bring to light the difficulties in balancing them.

Questions on *New Jersey v. T.L.O.*

1. What is the significance of the T.L.O. case?
2. In reaching a decision, what factors did the court need to *balance*?
3. Briefly identify the arguments put forth for fashioning a new standard for searching students. How is this different from the old standards?
4. Is the standard proposed by Justice Stevens any *better* than the standard proposed by the majority decision? Explain.
5. In the case of the *State v. Overton* (Ct. of Appeal, New York, 1967), Judge Keating stated:

   > It is in the high school years particularly that parents are justifiably concerned that their children not be accustomed to anti-social behavior, such as the use of illegal drugs. The susceptibility to suggestion of students of high school age increases the danger. Thus, it is the affirmative obligation of school authorities to investigate any charge that a student is using or possessing narcotics and to take appropriate steps, if the charge is substantiated.

   Do you agree with this statement in explaining the use of a reduced standard for searching students? Explain.
6. Does the concept of *due process* apply in the *T.L.O.* case? Why or why not?

8

FREEDOM OF RELIGION: PRAYER IN THE SCHOOLS

Introduction: The issue of prayer in the public schools has received a great deal of attention in U.S. courts; it has recently begun to be litigated in Canada as well. In this lesson, students have an opportunity to discuss the legal and social implications of the issue.

Objectives: Students will be able to:

1. Take and justify a position on the constitutionality of prayer in schools in Canada and the United States.

2. Critically assess their position on the merits of amending the Bill of Rights to allow for some prayer in schools.

Materials: Copies of Handout C-19

Time Required: 1 class period

Procedure:

1. Distribute Handout C-19 and allow time for students to read the article. (Note that Bill Vander Zalm is former premier of British Columbia.) Discuss what students think the law in Canada and in the United States would be on this question. Do they think that the reasonable limits clause would make a difference.

2. Present the following information to students and allow them to comment on it:

> The British Columbia Supreme Court ruled unconstitutional the section of the B.C. School Act that required schools to be opened each day with Scripture readings and the Lord's Prayer. The Court agreed with a previous ruling in Ontario that an exemption allowing children who did not want to participate to leave the room was not sufficient to keep the law from being coercive. The B.C. decision included the words from the Ontario Court: "If most of the pupils willingly conform, might not a few whose family faith is Moslem, or Hebraic, or Buddhist, feel awkward about seeking exemption? Peer pressures, and the desire to conform, are notoriously effective with children. Does common experience not tell us that these things are so, and that such feelings might easily, and reasonably, lead some not to seek exemption, and unwillingly conform, or others to seek it, and be forced to suffer the consequences to their feelings and convictions?"

Be sure students understand the importance of coercion in the Canadian decisions.

3. Explain to students that in a series of cases beginning in the 1960s, the U.S. Supreme Court has established its doctrine with respect to prayer in schools. This doctrine includes the following:

- An officially established prayer in the schools program, despite being non-denominational, was unconstitutional, despite an exemption clause.

- A law that mandated reading of Bible verses was unconstitutional, despite an exemption clause.
- A law that required a period of silence for meditation or silent prayer was unconstitutional.
- Student Bible study clubs could meet in school buildings, as long as the school allowed other clubs not related to the curriculum to meet in the school. However, school employees can only attend the meetings on a "non-participating basis."

Discuss with students how the U.S. decisions differ from the Canadian decisions.

4. Tell students that some people advocate amending the Constitution to allow prayer in schools. Encourage students to pair up with a student having a different view on this issue and prepare pro/con editorials on the issue. In preparing their editorials, each student should write a draft, exchange drafts with his/her partner, give the partner feedback, and then revise his/her own editorial, using both the feedback received and his/her own ideas about how best to respond to the arguments in the partner's editorial.

Extension/Enrichment:

Interested students might read and comment on the opposing viewpoints on school prayer written by Charles E. Rice and Justice William Brennan and appearing in *Taking Sides: Clashing Views on Controversial Issues* (Guilford, CT: Dushkin Publishers, 1983).

PREMIER'S SCHOOL PRAYER DOESN'T INSPIRE EVERYONE

By Douglas Todd
Religion Reporter, *Vancouver Sun*

> *Earth! Air! Sky!*
> *The Adorable glory of the god Savitri we contemplate.*
> *May our intellect be aroused.*
> —Hindu prayer

In public schools in Toronto, children can search for inspiration in such daily readings before hunkering down to writing and arithmetic. Many British Columbians of various faiths also believe it's just as appropriate for children to begin their public-school day by listening to a Buddhist meditation, Sikh prayer or secular-humanist poem as it is to have them ask to be delivered from evil through recitation of the Lord's Prayer.

Premier Bill Vander Zalm is not one of them. He has stated several times that he doesn't see anything wrong with students being asked to take part in the Christian rituals. B.C.'s School Act does not allow any other religious observance in the classroom. "I don't believe the Lord's Prayer is an imposition on anybody anywhere," Vander Zalm said earlier this month. "Because, whether you are Jewish or Christian or Sikh or Hindu, everybody believes in the Lord above... Everybody believes in our father who are in heaven," said Vander Zalm, a Roman Catholic.

Debate over laws in B.C. and other provinces that make the Lord's Prayer compulsory in schools has heated up in recent years. Court challenges have taken shape across the country, including B.C., arguing that mandatory prayer and Bible readings contravene the Charter of Rights.

"I believe the premier shows considerable insensitivity to the visible minorities in our midst," says Very Rev. Robert Smith, minister at Shaughnessy United and immediate past-moderator of the United Church of Canada. "The clear affront is to Buddhists, Hindus and Sikhs, of whose religious tradition he displays lamentable ignorance."

The Daily Christian rituals are most commonly observed in elementary classrooms in B.C. Although urban high schools tend to ignore it, the School Act states it is compulsory to open schools with a Bible reading and the Lord's prayer—which is taken from the New Testament gospel of Matthew. The prayer asks God the father to keep those who recite it from temptation and to forgive their sins.

The president of B.C.'s multi-faith umbrella group, Pacific Interfaith, also believes B.C. children should be allowed to follow the Toronto model and be given the option of beginning their days with readings from various religions. Barring that, Aziz Khiki says, there should be no reading at all or a one- minute silent meditation. "None of us has ever said we have trouble with the Lord's Prayer. It's just that the fact it has its roots in the Christian tradition gives the impression of exclusiveness." Khaki, a Muslim, says his group also includes local representatives from the Christian, Jewish, Hindu, Zoroastrian, Unitarian, and Sikh communities.

Colleen Fox says she does not mind her Grade 2 son reciting the Lord's Prayer in his Kerrisdale school. But the member of Vancouver's Dharmadhatu Buddhist Meditation Centre says she would much prefer he also had the chance to hear the wisdom of different faiths. "I want my children to learn there are other ways to be a decent human being." Fox says. Statistics Canada says there are about 12,000 Buddhists in B.C. As for Vander Zalm's claim that everybody believes in the Lord above, Fox says members of the Dharmadhatu Centre do not treat Buddha as god. She is disturbed by Roman Catholics who believe there is only one spiritual path.

The Canadian Jewish Congress, for its part, advocates the removal of all religious practices from schools, says Erwin Next, Executive Director for the Congress' Pacific region, which represents about 22,000 B.C. Jews.

Adds Sukh Khosla, a Hindu: "I think one interfaith prayer would be better for our schools." Khosla is past-president of the Vishva Hindu Parishad in Burnaby, the spiritual home of some of B.C.'s more than 10,000 Hindus. Khosla laughs when asked if he agrees with Vander Zalm's comment that everyone believes in the father in heaven. "No. No. We also believe in quite a few godesses," he says. "Hindus are very tolerant. Very flexible. There's not one God."

Statistics Canada figures reveal religious pluralism is firmly entrenched in Canada, particularly B.C. More than 100 religious groups have followers in B.C. That includes 725 "pagans." The 1981 federal census also lists more than 500,000 British Columbians who told interviewers they had "no religion." That figure is almost three times higher per capita than any other province.

"I don't see how you can pretend it is a Christian society," says Smith. "It is a secular society." Research by University of Lethbridge instructor Reginald Bibbs, Smith says, found 57 percent of Canadians say they have no religious tradition. Even Statistics Canada figures overstate religious affiliations, Smith says. For example, StatsCan has almost four million people identifying themselves as belonging to the United Church. The reality, Smith says, is that the national United Church itself claims only 840,000 members.

Vander Zalm's position on the Lord's Prayer is supported, however, by a spokesman for the more than 50,000 Christian Pentecostals in B.C. "In our Judaeo-Christian society, the Lord's Prayer has been a foundation for our school system," says Rev. Ed Austin, assistant district superintendent of the Pentecostal Association.

Austin says he sometimes gets upset when recent immigrants to Canada try to push their beliefs on others. He says he would not expect to go to a country that is predominantly Buddhist and have them follow Christian practices. "The moment you begin to accommodate every Tom, Dick, and Harry that comes from Timbuctoo or somewhere, you've lost the strength of your base," Austin said. "I think what Vander Zalm is saying is everybody believes in a supreme being. I don't think there's a single human who doesn't believe in a God, even those who profess to be atheist. There are no atheists in the foxholes."

Those students who have objections to reciting the Lord's Prayer, Austin says, should exercise School Act regulation 140 and get a note from their parents to excuse themselves He doesn't believe that will make children feel stigmatized.

But Nest says he knows Jewish people raised in B.C. "who can definitely recall feelings of isolation and being left out" when they exited the classroom during recitation of the Lord's Prayer. "The right to be excused does not overcome the chilling effect of religious exclusion on the free exercise of religion and conscience," Next says. "It may create the feeling a student is being punished for not taking part."

Two B.C. parents and the B.C. Civil Liberties Association filed a petition eight months ago with the B.C. Supreme Court claiming the present School Act is unconstitutional.... The petition, the first of its kind in B.C., argues that mandatory prayer and Bible readings contravene sections of the Charter of Rights that guarantee freedom of conscience and religion, as well as those that protect quality rights and support multiculturalism.

CLOSING REFLECTIONS

To help students synthesize and extend their understandings of fundamental rights in Canada and the United States, one of the following activities designed to bring closure to the unit may be used:

- In preparation for a class debate or a written submission to an appropriate legislative or judicial agency, have students research a fully articulated position on improving some aspect of fundamental rights in America. The focus may be specific rights that affect students directly (e.g., censorship of student newspapers), or current national issues (e.g., should judicial powers be curtailed). Alternatively, the issue may be whether or not the United States should adopt any of the constitutional practices or provisions existing in Canada.
- An interesting, ongoing class project is to complete a quilt or mosaic depicting rights protected under the Charter and the Bill of Rights. Scenes or symbolic representations that express fundamental rights are stitched together to produce a "quilt" or mosaic. The scenes can be drawn on construction paper or created by gluing cloth and using felt markers on white cotton. Individual pieces are stitched together using wool or a cloth border (graphics on the border and a title could be added). This project is greatly enhanced if students research their topics thoroughly and are invited to explain their scenes. Three variations of this project are discussed below:

  Comparative record of rights—Canada and the United States: Students pick a section (or part of a section) from the Charter and a corresponding article (or part of an article) from the Bill of Rights and portray differences and similarities between the two documents. Different colored paper or cotton might be used to distinguish Canadian and American rights. A single, checkerboard quilt could be produced with corresponding rights placed adjacent to ech other, or two comparative quilts could be produced.

  Historical record of rights in the United States: Students draw from the history of rights in the United States as the subject for their quilt. This activity can focus exclusively on the positive aspects of rights protection, or can be used to reveal the checkered historical record. (Possible blemishes include incidents involving African Americans, Native Indians, minority religious groups, Japanese-Americans, and Communists.) Situations where the rights record is favorable could be done in bright colors; situations where rights were violated could be done in somber colors.

  Contemporary record of rights in the United States: Students may explore the current state of rights including freedom of expression, freeedom of religion, language rights, and so on. Alternatively, identify a common theme for the entire quilt, say freedom of expression, and have students represent specific aspects (i.e., freedom of expression in schools, in business, in the civil service, involving political protest, and so on). Remarks made above about the positive or balanced focus also apply here.

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MEXICO

by Barbara Miller, Ken Rodriguez, and Elsie Begler

ESTADOS UNIDOS MEXICANOS

INTRODUCTION

The United States has a profound interest in understanding the cultural and legal traditions of our neighbor, Mexico.

- Mexico is the cultural homeland of the fastest-growing segment of our population.
- A 2,000-mile porous border separates our governments but not our economies and cultures.
- Political instability in Mexico would have dire consequences in the United States. The Mexican government is currently confronting overwhelming socioeconomic problems and population pressures.
- Mexico is an important trading partner—ranking third among countries that purchase goods from the United States. Over two-thirds of all products imported to Mexico come from the United States.

One important part of cross-cultural understanding is recognizing the differing perceptions of the role of law in society. While the United States and Mexico have constitutions that are similar in many respects, the two nations' experiences with self-government and constitution-making are remarkably different. For 300 years, Mexico was subjected to domination by Spanish viceroys and Catholic authorities who imposed a feudal political ideology of domination and conversion. When Mexico secured its independence in 1821, very few people had experience with individual decision making, let alone self-government. A good citizen in New Spain was one who showed deference, if not absolute obedience, to those with power.

The Mexican constitution-writers in both the 19th and 20th centuries turned away from Mexico's past to develop constitutions that closely resembled that of the United States. The constitutional experience of Mexico has been one of accommodating concepts of limited government and individual rights as stated on paper with what is acceptable to the people based on their history and experience with rule by leaders viewed as above the law.

The Mexican Constitution of 1917, while updated over 100 times, is still in effect today—making it one of the oldest constitutions in the world. The document consistently affirms social justice and equality as basic ideals. On paper, individual rights hold a more central place in the Mexican Constitution than in our own. While the U.S. Constitution went into effect with only the promise of a Bill of Rights, the Mexican Constitution of 1917 begins with 29 articles outlining individual civil liberties. The document also establishes a federal system in which power is shared with the states and local government. The federal power is further limited by creation of three branches of government much the same as in the United States.

The debate over whether a "U.S.-style" constitution was appropriate for Mexico began in the 19th century and continues today. Many scholars of Latin America and Mexican intellectuals, including Octavio Paz, Mexico's Nobel-prize-winning essayist, question whether the U.S. Constitution and those of other Western nations were good models for developing democratic institutions. Writes Paz, "The nations that inspired our 19th-century liberals are no longer examples. Yet we do not want to return to the medieval theocratic state. When will we be capable of thinking for ourselves?"

Analyzing the Constitution of Mexico is only a starting point for understanding Mexican legal traditions and citizen expectations of individual rights. In Mexico, the constitution is viewed as a statement of goals rather than a protective written contract between the people and the government. In Mexico (as in all countries), one must look at the "living law" as well as the "written law" to understand the experience of the people.

This unit presents some of the basic elements of Mexican culture and history through a study of Mexican experiences with constitutional principles. The packet is not designed as a comprehensive unit on Mexico but as a supplement to courses in geography, government, or U.S. history in which a focus on legal traditions may enhance cultural understanding. The first three lessons introduce students to the political culture of Mexico through the use of symbols, heroes, and a look at ancient traditions of the Aztecs and other Indian cultures that are still an important part of the Mexican experience in the modern world. The next two lessons focus on the 1917 Constitution of Mexico and its role in Mexico's history. Lessons help students see the Mexican Constitution as a statement of revolutionary goals that are still important today. A lesson on church/state relations illustrates the conflict over whether limiting the power of the Catholic Church was necessary to guarantee freedom of religion or instead interfered with that constitutionally protected right. Two lessons provide case studies on land reform, an issue that continues to challenge Mexican leaders. One of the cases illustrates the peasant and elite perspectives on land reform. The other focuses on how disputes are resolved in rural Mexico. The final lesson looks at art as a form of political expression in Mexico in the past, present, and future.

1

LOS ESTADOS UNIDOS MEXICANOS AND THE UNITED STATES: COMPARING NATIONAL SYMBOLS

Introduction: In this activity, students analyze a variety of symbols significant in the U.S. or Mexican cultures. They describe the images and attributes the symbols convey about the national characteristics of these countries.

Objectives: At the end of this lesson, students will be able to:

1. Identify and explain the significance of several U.S. and Mexican symbols.

2. Make hypotheses about what can be learned about Mexican history and culture by examining several symbols.

3. Explain similarities and differences in U.S. and Mexican responses to particular symbols.

Time: 1-2 class periods

Materials: Copies of Handout M-1 for all students.

Procedure:

1. Tell the class that they are going to be studying Mexico. Ask them to speculate about the reasons why learning about Mexico might be important to people in the United States. Be sure that the following reasons come out in the discussion:

- Mexico is the cultural homeland of the fastest-growing segment of our population.
- A 2,000-mile porous border separates our governments but not our economies and cultures.
- Political instability in Mexico would have dire consequences in the United States. The Mexican government is currently confronting overwhelming socioeconomic problems and population pressures.
- Mexico is an important trading partner—ranking third among countries that purchase goods from the United States. Over two-thirds of all products imported to Mexico come from the United States.

2. Next, ask students to define the word *symbol*. A symbol is a concrete object that represents an idea, belief, value, or other intangible concept. If students have trouble identifying any symbols, ask them what their school team mascot is. What feelings does the school symbol evoke? What symbols are personally important to students?

Adapted from "Japan and the United States: Comparing Symbols," an activity by Ted Kempton in *Japan in the Classroom* (Boulder, CO: SSEC, 1987).

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3. Divide the class into small groups and distribute Handout M-1. Have each group label the objects as best they can and then divide the objects into two groups—those that are American symbols and those that are Mexican. Students will probably achieve this through the process of elimination, recognizing the U.S. symbols fairly easily and designating the unfamiliar symbols as Mexican. Note that some symbols may be identified with both cultures.

4. As a class, review the handout, making a two-column list of U.S. and Mexican symbols on the board and labeling each item correctly. If students have not been able to recognize the exact name of a Mexican symbol, provide the information using the **Teacher Background Information** following the **Procedure.** Explain that some symbols have common meanings in the two countries while others evoke very different—even opposite—responses.

5. Have students return to their small groups. Instruct each group to generate a list of adjectives that each symbol in the U.S. column brings to mind. Groups should come up with three or four adjectives. Students should also consider which U.S. symbols might evoke positive responses among Mexicans (Coca-Cola) and which negative (covered wagon). After the groups have assigned adjectives, instruct each group to pick one symbol that best represents the United States and prepare reasons for their choice.

6. Through whole-class discussion, consider the adjectives the students have generated for each item. List these on the board. Have each group present and defend its choice for most representative symbol. Have the class reach consensus on the best symbol. Ask if all U.S. citizens would agree on one symbol. Discuss reasons people are drawn to different symbols.

7. Have students work in small groups to complete the same adjective assignment for the Mexican symbols. Allow about ten minutes for this task.

8. Bring the class back together and list the adjectives on the board. Review the adjectives selected by the students. Where necessary, explain Mexican meanings and adjectives for symbols that students have interpreted differently. Expect to spend time on symbols that are opposite in meaning. As a large group, compare the types of adjectives assigned to the U.S. and Mexican symbols. Use the following questions to stimulate discussion:

- Were any of the same adjectives used? Discuss similarities in characteristics—courage, strength, love of beauty, etc.
- What differences and similarities did students see between the two nations' symbols?
- Which symbols are used to denote strength and courage?
- Which symbols show love of beauty?
- Which symbols have opposite meanings in different cultures? Discuss the eagle and serpent as two examples of symbols having very different meanings. (A serpent is a symbol of Satan for many Christians, yet a life-giving source in Mexican culture.)
- How might different meanings for symbols influence communication and understanding between Mexico and the United States? How can the United States benefit from a deeper understanding of Mexican culture?

9. Describe for students a cartoon that appeared in a newspaper in Mexico City. It showed the Statue of Liberty, gagged and holding a newspaper filled with "blablabla." Discuss these questions with students, or ask students to write their answers:

- How did that cartoonist's ideas about the Statue of Liberty differ from the traditional image?
- What idea was the cartoonist expressing about liberty in the United States?
- Do you think most Mexicans agree with the cartoonist's views?

- Do you agree or disagree with the cartoonist? Explain your answer.

The Statue of Liberty is commonly used as a symbol in cartoons in the United States and around the world. Students could search for other cartoons and analyze how this symbol has been used and for what purposes. Students could also draw their own cartoons using the Statue of Liberty.

Enrichment:

Students can complete further research to expand the list of symbols or demonstrate understanding of the historical and contemporary significance of Mexican symbols.

Teacher Background Information:

The symbols used in the handout are identified below; possible adjectives and descriptions are also provided.

1. U.S. Eagle: strong, powerful, aggressive, courageous, clever.

2. Feather serpent: earth, sky, rain, fertility.

   The serpent is the source of all life. The achievements of Topeltzin Quetzalcóatl, an 11th-century leader, are interwoven with the Feathered Serpent God. Quetzalcóatl taught the skills of agriculture and arts, as well as the ritual calendar, to mankind.

3. Matador: graceful, artistic, brave.

   The bullfight is a national pastime. Mexicans do not regard bullfighting as a contest between man and animal but rather as a beautiful and poetic art that could be compared to the ballet or to a sculpture. The art involves enticing the bull with the cape and then plunging the sword as the animal attacks. The meat is given to the needy.

4. Baseball player—manly, competitive, aggressive, wealthy, strong.

5. Ancient calendar: cyclic, religious, ordered, symbolic, having continuity.

   The calendars developed by the ancient civilizations of Mexico are a proud reminder of Mexico's connection with ancient times. This twenty-ton Aztec calendar now resides in the Museum of Anthropology. The calendar bears the face of the sun god, Tonatiuh. He is clutching human hearts in his claws. The Aztecs believed that this era would be destroyed by an earthquake.

6. Uncle Sam: friendly, strong, kind, tough, wise.

7. Coca Cola: fun-loving, energetic, youthful, vivacious.

8. Virgin of Guadalupe: saintly, miracle worker, beautiful, mother to Mexico.

   "The Dark Virgin" was the protectress of those who fought for freedom from Spain. To this day she is the patron saint of Mexico. She is honored by the poor for the many miracles that she performs on her behalf. They approach her on their knees to show love and respect. Her image can be found on taxis, sombreros, jewelry, in kitchens and saloons. Her likeness is made of plaster, marble, wood, stone, clay, and plastic.

9. Covered wagon: adventurous, brave, civilizing, family-oriented (from a Mexican perspective, this symbol may represent greed, aggression, and acquisitiveness).

10. Skull and skeletons: death, other worldly, ancestral, life-affirming.

Mexicans consider death an integral part of life. Return of the dead is observed on November 1 and 2. The living put out a feast and wait for dead friends and family to return. Respected, deceased relatives who come to call are treated courteously. The dead return to say hello or possibly do a little business. The cemeteries are filled with picnickers who sing, dance, drink, and decorate tombs.

11. Statue of Liberty: freedom, liberty, home, welcoming, kind, open, strong.

12. Mexican Seal: The seal contains many symbols.

Emblem: This emblem is on the Mexican flag. Specific items to be mentioned include an eagle (symbol of the sun), serpent (life), cactus, rock, water. The god Huitzilopochtic promised the Aztecs they would settle in a land where every need would be provided. In 1325, they saw the sign promised by their god. On a small rocky island in a lake, they saw an eagle devouring a serpent while perched on top of a cactus. Mexico City stands on that spot today.

13. Jaguar: strong, powerful, protective.

Aztec warriors entered battle dressed in pelts of jaguars. The jaguar was the most powerful predator in the Americas, a nighttime hunter able to swim and climb trees.

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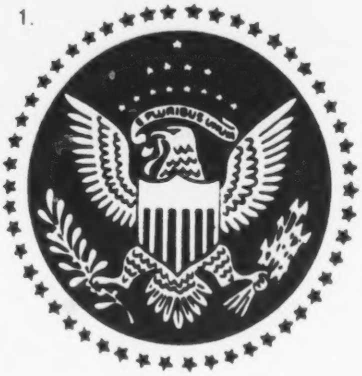
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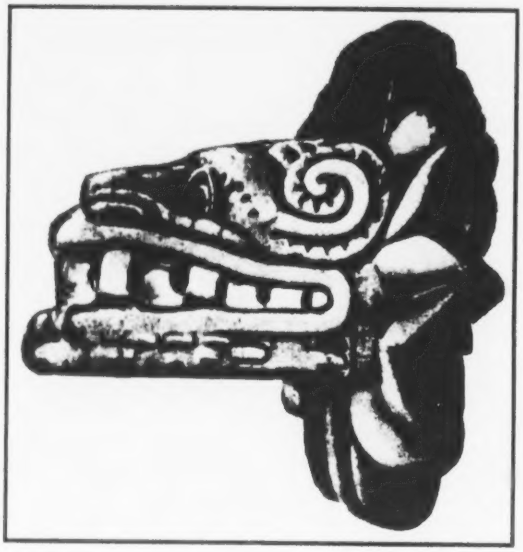

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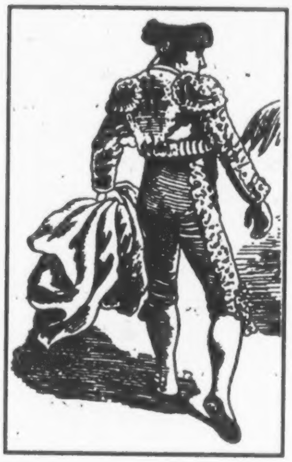

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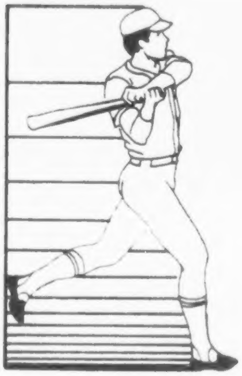

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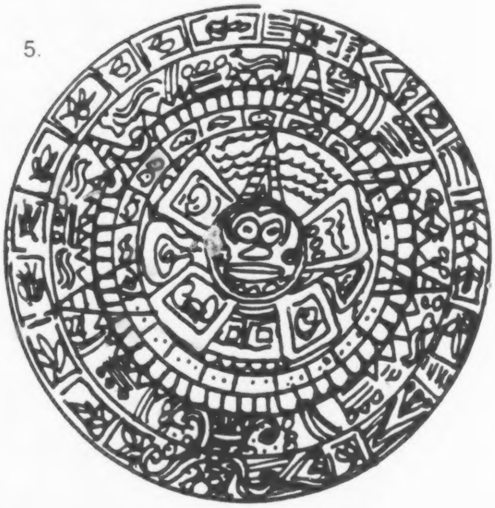

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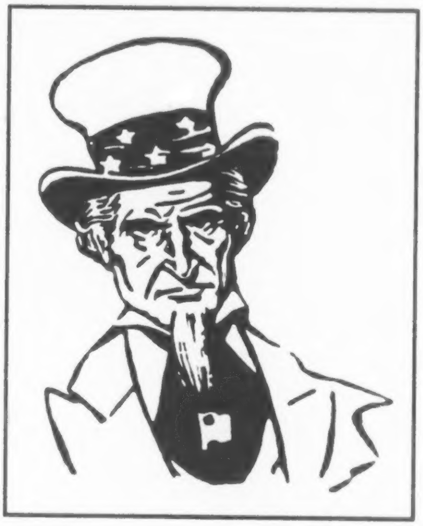

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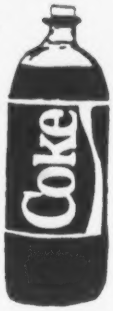

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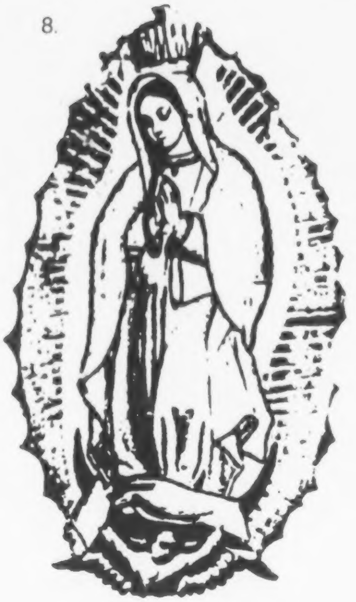

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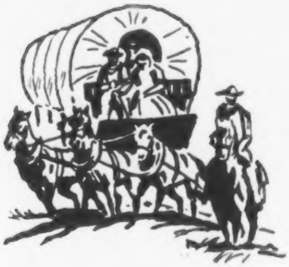

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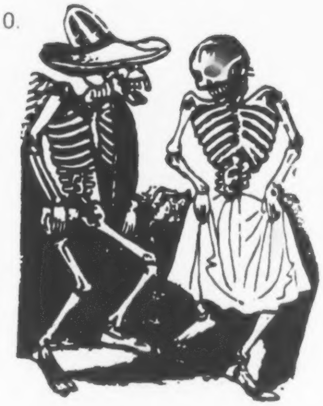

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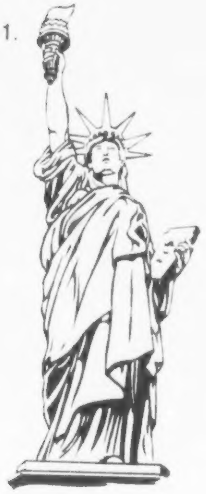

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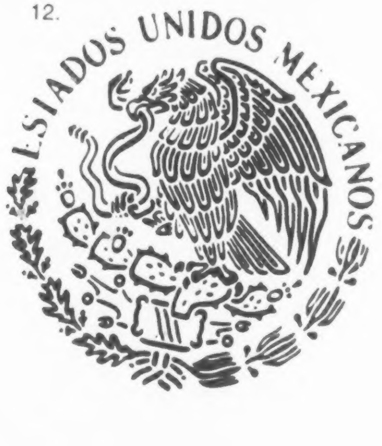
ESTADOS UNIDOS MEXICANOS

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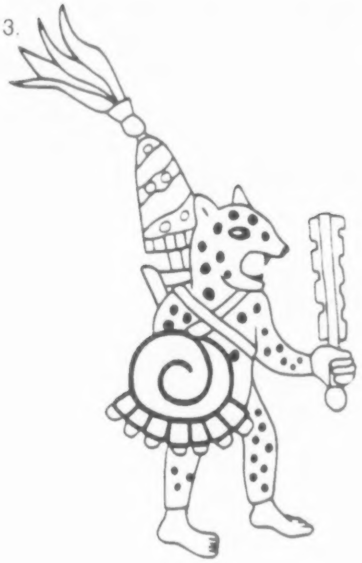

2

MEXICO'S HISTORY AND NATIONAL HEROES

Introduction: This lesson opens with a brief examination of historical events from the early civilizations to the Revolution of 1910. This historical summary highlights the primary themes of Mexican history: the struggle for political stability, the struggle for equality, the struggle for freedom from economic want, and the struggle for freedom from domination by foreigners and the Church. In this phase of the lesson students create a chronology illustrating key events in Mexican history and extrapolate from this timeline the major themes that emerge from the historical perspective gained.

The second part of the lesson features biographical sketches of men who dedicated their lives to the struggle against injustice and inequality. From these profiles emerge Mexican attitudes toward authority and justice. Through role plays, students present the personal traits people admire in their national heroes.

Objectives: Students will be able to:

1. Describe key historical events in Mexican history preceding the Revolution of 1910.

2. Derive from historical chronology the enduring themes that characterize the struggles of the Mexican nation.

3. Apply the enduring themes in Mexican history to analyze the aspirations and effectiveness of Mexico's national heroes.

Materials: Copies of Handouts M-2, M-3, M-4, and M-5 for all students; butcher paper and colored markers, props and costumes to enhance role plays

Time Required: 3-4 class periods plus outside preparation time

Procedure:

1. Discuss with the class what we can learn about a people from a study of their history. Discuss the importance of learning about the history and people of Mexico.

2. Distribute Handout M-2. To minimize the reading load, divide the class into seven groups. Assign each group one section of the material. Explain to students that each group is to read and study its assigned section in order to teach that portion of Mexico's history to the entire class.

3. Before the groups begin reading, distribute Handout M-3 so students can record events on the key dates listed on the chart. Explain to the class that when their group has finished the reading assignment, they should plan to illustrate their time period on a class mural drawn on butcher paper. When all groups have completed their portion of the mural, all the segments will be connected and each group will then present information about its time period to the class. As each group presents, students will record the events on their chronology chart. When all eight groups have presented, the class will have a complete overview of the highlights of Mexico's history to 1917.

4. Before the groups begin reading, list the following items on the board: (1) the struggle for political stability, (2) the struggle for equality, (3) the struggle for freedom from economic want, and (4)

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the struggle for freedom from domination by foreigners and the Church. Explain to the class that these are the major themes we are studying from Mexico's history. Tell them that these themes should be a guide to their reading; students should especially note any examples that support or illustrate these four themes for inclusion in their mural and later class discussion.

5. Allow time for students to read and work in their groups. Alternatively, the reading and the chronology chart can be assigned as homework and the groups need only assemble at the beginning of the next class period to plan and work on the illustrations for their mural.

6. After each group has finished the reading and written portion of the work, distribute sheets of butcher paper and colored markers. Allow groups time to complete their work. You may want to draw in the key dates and label the time period on the butcher paper before you distribute it to the groups.

7. Distribute Handout M-4 and go over the directions on the worksheet. You may want to have students work in small groups of three. To bring closure to this part of the lesson, discuss the following questions with the class:

- What are the major themes in Mexico's history? What events support these themes?
- In what way was Mexico's colonial experience a formative period in its history? Contrast this experience with the colonial experience in the United States.
- Why has it been so difficult for the Mexican people to overcome the problems of the past? Did the revolution of 1910 solve the problems? Why or why not?

8. Begin the second part of the lesson by explaining to students that something can be learned about a country by studying the persons they choose to admire and honor as heroes. Ask the class to identify some heroes we honor in U.S. history. Discuss with the class what they consider to be the essential characteristics that qualify a person for status as a national hero. Also discuss purpose(s) national heroes might accomplish for society.

9. Explain to the class that they will be studying several national heroes in Mexican history and that they will be conducting interviews with the heroes that will help us better understand why these persons were important and what honoring them tells us about Mexican culture.

10. Divide the class into six groups, five to focus on individual heroes and one to act as a panel of interviewers. Distribute Handout M-5. Ask students to read the biographical sketch the group has been assigned and to prepare a two-minute presentation on the person assigned. Each group should select one member to represent the hero assigned. Additional research and props and costumes will enhance the activity. Questions to help the panel of interviewers prepare can be found in the handout.

11. Arrange the room so that the class can see both the hero and the panel of interviewers. Have each hero give a two-minute introduction of himself. Allow time for the panel and the class to ask questions of the person. Bring closure to this portion of the lesson by asking students to brainstorm the special qualities of each leader. Then ask students to respond to the following:

- How are these qualities examples of the characteristics of national heroes that were discussed at the opening of this activity?
- How did each hero contribute to Mexico's struggle for political stability, equality, freedom from economic want, and freedom from foreign and church domination?

12. End the lesson by having each student create a poster or a cartoon combining characteristics from each leader into a "super leader."

A BRIEF HISTORY OF MEXICO TO 1917

Understanding Mexico has become increasingly important for those of us living in the United States. Mexico is an important trading partner of the United States, selling us oil and purchasing manufactured products. In the past, U.S. residents have barely looked south, but today we recognize our growing interdependence and the common problems we share. We also recognize how little we know about our most immediate neighbor to the south.

To understand Mexico today, we must examine Mexico's long history. The following reading only represents the highlights of Mexico's past from its early Indian civilizations to the Revolution of 1910. You may want to consult other sources for greater detail. As you read this material, look for the common themes of class, land reform, religion, and political struggle.

Mexico's Early Civilizations

Around 1200 B.C., the **Olmecs** created the first important civilization in the area that is today Mexico. Their civilization in the southern coastal region of the Gulf of Mexico lasted about 700 years. During that time, they built three great cities. The Olmecs were an artistic and religious people who influenced other groups living in the area, including the Mayas. The Olmec civilization eventually disappeared.

The **Mayas** lived in the Yucatan Peninsula and southward into what is now Guatemala. Their civilization became important around 150 A.D., when they built their first cities. The Mayas developed sophisticated systems of politics, language, trade, and religion. Within 300 years, however, their cities were abandoned and the Maya Empire broke up into many smaller tribes, which often fought one another, but which remain today in their traditional homelands.

Other important civilizations in early Mexico were built by the **Zapotecs** and Teotihuacanos around 300 B.C. The Zapotecs built the city of Monte Alban (near the present-day city of Oaxaca); the Teotihuacanos' empire was based at the city of **Teotihuacan** (teo-ti-wa-kan), near present-day Mexico City. Teotihuacan was an important religious center decorated with statues and paintings of the gods. At that time, it was probably the largest city in the world with over 200,000 inhabitants. The influence of Teotihuacan spread to the highland regions of southern Mexico, while the influence of Monte Alban was reciprocally felt in central Mexico. The fall of Teotihuacan is shrouded in mystery. It appears to have been sacked and burned around 650 A.D. Its large pyramids and wide streets can still be seen today. Monte Alban also experienced a mysteriously caused decline.

The successors to the Teotihuacanos were the **Toltecs**, who were eventually conquered by the **Aztecs**. The Aztecs were originally a small tribe who also called themselves **Mexicans**. They had migrated southward from northwestern Mexico. They first settled on two islands in the middle of Lake Texcoco around 1325 A.D. Legend has it that here they received a long-awaited sign from their gods indicating a favorable place to settle. The sign was an eagle perched on a cactus holding a writhing snake in its beak—this symbol today appears on Mexico's flag.

Within 100 years the Aztecs dominated all other tribes in the region. They built the largest empire in pre-Hispanic times. Their capital was called **Mexico-Tenochtitlan** (te-no-ch-tit-lan), a city of about 560,000 inhabitants. (Mexico probably means the town in the middle of the moon [the lake], and Tenochtitlan means prickly pear cactus.) The Aztecs constructed a city of huge pyramids and spacious pla-

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Much of the information in this reading was taken from Alan Riding, *Distant Neighbors: A Portrait of the Mexicans* (New York: Knopf, 1984).

zas, which they decorated with statues of their gods. The city was linked to the shores of the lake by a series of causeways and aqueducts.

The Aztecs, like the Toltecs, practiced human sacrifice to appease their gods. Among their numerous gods was one named **Quetzalcóatl** (ket-sal-ko-at-l), represented as a plumed serpent. The legend of Quetzalcóatl originated with the Toltecs, who believed he had abandoned their city because he had been tricked by one of the evil gods. Quetzalcóatl retreated to the sea, but on his departure vowed to return someday.

The Spanish Conquest of Mexico

Like other Spaniards of his time, **Hernan Cortés** was drawn to the Americas by dreams of wealth. In 1519, Cortés sailed from Cuba with 500 men and 16 horses, reaching the shores of Mexico in an area today called Veracruz.

Moctezuma, the Aztec ruler, believed Cortés might be the returning god, Quetzalcóatl. Moctezuma sent gifts of gold, silver, and jade hoping to convince the god to return to the sea. The gifts, however, had the opposite effect. Cortés told Moctezuma's messengers that he could not leave without first saluting the Aztec ruler in his palace at Tenochtitlan.

Cortés and his group marched inland toward Tenochtitlan. Along the way, he encountered several hostile tribes, but their weapons were no match for Spanish cannons and cavalry. The Indians had never seen horses before. The Indians soon agreed to form an alliance with the Spaniards against the Aztecs.

Moctezuma agreed to receive Cortés and, in November of 1519, the Spaniards and their Indian allies marched along the causeways into the magnificent city of Tenochtitlan. The Spaniards marveled at the giant temples, pyramids, palaces, crowded markets, and the extravagance of Moctezuma and his court. Moctezuma entertained Cortés lavishly for several weeks. However, sensing that his small army was vulnerable, Cortés decided to place Moctezuma under arrest. Moctezuma surrendered peaceably. The move could have sparked an uprising, but instead it placed Cortés at the head of the Aztec Empire.

A few months later, Cortés left Tenochtitlan to meet an expedition sent by the governor of Cuba to arrest Cortes for disobeying orders. During his absence, Cortés' soldiers fired on a crowd, killing over 4,000 Indians. The slaughter started an uprising among the Aztecs. Cortés managed to re-enter Tenochtitlan and ordered Moctezuma to beg his people to end their attacks. Moctezuma was struck on the head with a stone while addressing the crowd. He died shortly afterwards.

Under siege by the Aztecs, water and food ran out and Cortes decided to leave Tenochtitlan. The retreat was a disaster. Hundreds of Spaniards and their Indian allies were killed or drowned as they tried to escape along the causeways in the dark. The event is known as *la noche triste*, the sad night.

Five months later, May 1521, Cortés renewed his attack against Tenochtitlan. With lightening speed, his army moved against the Aztecs and their new emperor, **Cuauhtémoc**. Cuauhtémoc resisted for a while, but the Spaniards surrounded Tenochtitlan and cut it off from supplies on the mainland. By August the Aztecs surrendered.

Cortés ruled Mexico, now called **New Spain**, for a short time. He explored new trade routes and conquered other tribes. He burned the feet of Cuauhtémoc in hopes of learning the secrets of the Aztec treasures. On charges of plotting against the Spaniards, Cortés ordered that Cuauhtémoc be executed by hanging.

After the fall of Tenochtitlan, the Aztecs were immediately enslaved. Their first task was to dismantle their city and use the stones from their temples and pyramids to build the churches and palaces of their new masters. The Aztecs saw their defeat as the defeat of their gods and gradually transferred their loyalty to the god of the Spaniards.

Colonialism in Mexico

By 1542, the Spanish had conquered most of what is now Mexico. The rule Spain imposed on its colony was one of military and religious authoritarianism. The king appointed a ruler, or **viceroy**, with absolute power over everyone. The people were expected to be silent, obey, and to refrain from discussing the affairs of government. Spain replaced the viceroy every four years to ensure loyalty to the Spanish Crown.

Spanish law in the New World was called the **Law of the Indies**. This was the king's special code apart from Spanish law; it applied only to the colonies. The Law of the Indies specifically regulated who could hold government offices, trade with Spain, and what loyalty was owed to the Crown. However, corruptions like the selling of public offices and defrauding the Crown were widespread and tolerated practices in the colonies. An unofficial system developed whereby persons in positions of authority expected gifts or money in return for duties or favors performed.

Colonial society evolved into a social pyramid of classes. At the top were the *peninsulares* (pay-neen-su-láh-res), people born in Spain. They controlled the Church, government, and business. This was a very small group because most returned to Spain once they made their fortune. Spaniards born in Mexico were called *criollos* (cre-óh-yos) and were directly below the *peninsulares*. Many *criollos* became wealthy ranchers, farmers, or miners. They were not allowed to hold important governmental or Church offices, nor were they given any political rights for fear they might use those rights to demand independence. The Crown required that the colony be governed by people born in Spain.

The *mestizos* (may-stée-sos) were people of mixed Spanish and Indian ancestory. They were small farmers or workers on the big plantations owned by the *criollos*. By 1800 the mestizos numbered about 2 million; today they form the largest percentage of the Mexican population. African slaves and Indians were at the bottom of the social pyramid. Through the *encomienda* (en-coh-myén-dah), a system of giving land to Spaniards, Indians living on the land became the property of the landowner. The owner had the responsibility to Christianize his people and to feed and clothe them. The Indians did all the hard labor and were by far the largest group in the pyramid. However, three-fourths of the Indian population was wiped out by 1548, victims of massacres, exploitation, and European diseases.

By the end of the 16th century, the Crown ended the *encomienda* system, but the Indians continued to live miserably in huts outside the hacienda mansion, renting tiny plots of land to grow corn and becoming indebted to the hacienda store. When gold and silver mining became important economic activities in the 17th and 18th centuries, cheap Indian labor helped make the Crown very rich. In later years when small textile and metalwork factories were started, the Indians again were drafted for long hours of hazardous work.

The Indians adapted easily to the religion of the Spaniards. The numerous Catholic saints matched the great numbers of pre-Hispanic gods. Both religions used elaborate ceremonies and both emphasized the principles of punishments and rewards. It was at the site of a temple to an Aztec goddess that the "dark-skinned" **Virgin of Guadalupe** appeared to the Indian boy, Juan Diego, on December 12, 1531, outside Mexico City. Whether legend or miracle, the event symbolized the Indian's embrace of Catholicism, and the Virgin of Guadalupe became the patron saint of Mexico. The Church leaders used their fearsome authority to suppress political thought and to limit expression to religious themes.

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Mexico Gains Independence

Mexico's War of Independence was largely an economic struggle between the *criollos* and the *peninsulares*. As the population, wealth, and territory of Mexico grew, so did trade with other countries. While the *criollos* controlled the cities, farms, mines, and factories, profitable foreign trade was controlled by the *peninsulares*. The *criollos*, however, were no longer interested in having their economic interests governed from Spain.

The American War of Independence and the French Revolution inspired many *criollos* to think about the nature of their society and its relationship to Spain. However, the *criollos* demonstrated no concern for the misery of the Indians and the *mestizos*. A German traveler, Alexander von Humbolt, who visited Mexico in 1803, wrote that "Mexico is a country of inequities [where] there is no equality in the distribution of wealth and culture." The *criollos* were able to think of political and economic rights only in terms of themselves.

The first real chance for Mexican independence came in 1808 after Napoleon conquered Spain. The *criollos* urged the viceroy to declare that Mexico would rule itself until such time as the King was restored to power. The fearful *peninsulares*, however, replaced the viceroy and declared their allegiance to the King. The *criollos* decided it was time to organize a revolution.

Miguel Hidalgo y Costilla, a *criollo*, was the parish priest of Dolores, a poor, Indian town northwest of Mexico City. Hidalgo and other *criollo* leaders planned an insurrection for December 8, 1810. When their plot was discovered, Hidalgo and his followers decided to act immediately. With guns in hand, they released the town's prisoners. At daylight on September 16, the church bells rang out and Hidalgo declared "Mexicans! Long live Mexico! Death to the *gachupines* (a derogatory word for the *peninsulares*)!"

The War of Independence lasted 11 years at a cost of 600,000 lives, mostly Indians and *mestizos*. Hidalgo was captured and executed, but the revolt continued under another priest, **Jose Maria Morelos**. The leadership of Morelos was chaotic, but he did manage to issue a Declaration of Independence and a new constitution. After Morelos was executed in 1815, the revolutionary movement quieted for the next few years.

In 1820 political conditions in Spain created a new opportunity to revive the revolution. This time the movement was organized by a charming but cruel military leader, **Colonel Agustin de Iturbide** (ee-toor-bée-day). Iturbide proclaimed the Plan of Ignala declaring that Roman Catholicism was Mexico's only religion, that all Mexicans were equal, and that the new country would be ruled by a constitutional monarch to be brought from Europe. Iturbide's army met little resistance from the Spanish rulers and on August 24, 1821, the Spanish viceroy recognized the Plan of Ignala in the Treaty of Cordoba. Iturbide was appointed head of the new government.

Troubles for the New Nation

Spanish rule did not prepare the colony for independence. Unlike the English colonists in North America, the Spanish colonists had no experience in governing themselves. Through the **Law of the Indies**, the king had sanctioned every law, act, and governmental office in New Spain.

In February 1822, Iturbide led the first meeting of the Constituent Assembly. The delegates to the Assembly argued endlessly as to whether Mexico should be a monarchy or a republic. Finally, the Assembly voted for a monarchy and on July 21, Iturbide was crowned Emperor Agustin I.

Challenges to the authority of the emperor began immediately. Iturbide had been in office four months when **General Antonio Lopez de Santa Anna** organized an uprising against him. To avoid another war, Iturbide gave up his crown on March 19, 1823, and fled to Europe. He foolishly returned a year later and was captured and executed.

General Santa Anna was the country's first *caudillo* (cow-dée-yo), a kind of national warlord. From his large estate in Veracruz, he set out with his ragtag armies to start or suppress uprisings. Numerous times he accepted the invitation to become president only to resign or to be overthrown months later. During Mexico's first 30 years of independence, 50 governments were formed. Santa Anna headed 11 of them. But even the powerful Santa Anna could not impose his authority on the entire country.

At the heart of the new country's political problems was an economy weakened by war and unable to provide the money to run the government. To make the problem worse, the wealthy landowners were unwilling to pay taxes to raise the necessary revenues. The government leaders then turned to the wealthiest group—the Church—but it quickly resisted any efforts to tax its vast properties.

In the distant province of Texas, American settlers resented Mexico's tax demands. In 1835, they attacked the Mexican garrison there. Angered by the event, Santa Anna led an army of 6,000 to punish the rebels, savagely massacring the defenders of the mission at El Alamo. Within months, however, the Texans under the leadership of Sam Houston defeated the Mexican Army and captured Santa Anna. In exchange for his life, Santa Anna agreed to recognize Texas' independence.

Within two years, Santa Anna again found himself in a war when the French barricaded the port at Veracruz to demand payment for damages to French citizens during earlier riots in Mexico City. The French quickly won the war forcing Mexico to pay its debts. During the fighting, Santa Anna lost his leg to a cannon and again became a hero. He buried the foot with full military honors. Santa Anna was in and out of power three times within the next three years.

The U.S. Congress admitted Texas into the Union in 1845 and the government in Washington, D.C. showed great interest in other Mexican land to the west. Some Mexican generals decided that the American annexation of Texas was a cause for war. In 1846, Mexican troops marched north of the Rio Grande. The United States saw the challenge as the excuse it needed. In 1847 General Zachary Taylor marched south, defeating an army commanded by Santa Anna. Meanwhile, General Winfield Scott landed troops at Veracruz and marched toward Mexico City. Scott took the capital and raised the American flag above the National Palace. In 1848, Mexico signed the Treaty of Guadalupe-Hidalgo, surrendering half of its territory to the United States.

Emperor Maximilian and Porfirio Diaz

During the early years of independence, Mexico's history was shaped by the conflicts between two political parties, the **Liberals** and the **Conservatives**. The Liberals wanted Mexico to reject its Spanish, Indian, and Catholic traditions and to build a new nation modeled after the United States. The Conservatives wanted to keep the Church very powerful, to maintain a strong army, and to be governed by a dictatorship.

The Liberals under the leadership of **Benito Juarez** (Bay-née-toh Huah-res) managed to achieve many reforms during the late 1850s. They nationalized much church property and closed many monasteries and convents. The Conservatives reacted to these reforms by asking Europe for help. In 1861 Britain, Spain, and France landed troops in Veracruz under the pretense of wanting payment for debts owed. Britain and Spain quickly withdrew, but France had different ideas.

Dreaming of spreading his influence, Napoleon III responded to the Conservatives. On May 5, 1862, the French occupied Mexico City and offered the leadership to **Maximilian of Hapsburg**, a distant relative of Napoleon's. Soon, Maximilian and his wife, Archduchess Carlota, were named emperor and empress of Mexico. Maximilian, however, was unable to establish his authority over the country.

He angered the Conservatives by refusing to repeal the Liberal reforms. With little support from Napoleon, Maximilian was doomed to failure. He was captured and executed on June 19, 1867.

After the execution of Maximilian, Benito Juarez returned to the presidency of Mexico by defeating his Conservative opponent **General Porfirio Diaz** (Por-feér-yo Dée-ahs). For the first time, the country was at peace, but the government was near bankruptcy and unable to keep order outside Mexico City. Juarez pushed for the building of railroads, improvements in the educational system, and land reform. In 1871 Juarez again defeated Diaz in elections but Juarez died of a heart attack one year later.

In 1876 Porfirio Diaz became president. By 1884, after his second election, Diaz had come to believe it was his destiny to save Mexico. He became more conservative. Diaz developed the country, built up the economy, kept the rich happy, made peace with the Church, and abolished politics. Diaz was the only politician. Press censorship was instituted, and many journalists and editors were jailed. All criticism of the government disappeared. Diaz himself chose every state governor and senator. He established a federal force known as the *rurales* (roo-ráh-lays) to end chaos in the countryside.

During the dictatorship of Porfirio Diaz, new industries appeared and foreign trade expanded. Diaz expanded the railroads and built ports on both oceans. Foreign investment poured into Mexico, particularly in agriculture and mining. But little of the wealth filtered down to the Indians and *mestizos* who continued to live in poverty. Land ownership continued to concentrate in the hands of a few rich families. Some 3,000 families owned half of the country and lived in magnificent haciendas. Meanwhile, millions of peasants remained landless. The few remaining communal lands were constantly being stolen from them.

The Revolution of 1910

In 1908, **Francisco I. Madero**, a wealthy idealist, wrote a daring and popular book against Diaz entitled *The Presidential Succession of 1910*. Madero traveled the countryside promoting his ideas and stirring the peasants and workers with the promise of change. In 1910 Madero's Anti-Reelection Party nominated him as a presidential candidate to run against Diaz. Madero's popularity grew so rapidly that Diaz had him jailed and approved his release only after Diaz himself had won reelection in June. Madero fled to the United States, where he published his Plan of San Luis Potosi calling for an uprising on November 20, 1910.

The rebellion was a disaster. But it sparked so much unrest that, by 1911, government troops began defecting to the rebel cause. Madero called for the resignation of Diaz, but only when the unrest spread to Mexico City did the dictator agree to leave. In October of 1911, Madero was elected president. While it seemed that the revolution had been won with little bloodshed, in reality it had just begun.

The resentment by the Indians and *mestizos* at the loss of their land ran deep. In a small village south of Mexico City the villagers elected a 30-year-old *mestizo*, **Emiliano Zapata** (Ay-meel-yáh-no Sah-páh-tah), to head the village council. The villagers wanted to recover their land and they looked to Zapata for action. Zapata, respected as a man of courage and honesty, was also angry at the injustices and inequalities suffered by the villagers. He promised to defend the community's water rights and to regain the villagers' land. Zapata organized a band of armed men, seized haciendas and towns, and began returning land to the villagers. This eventually put Zapata at odds with Madero. Madero saw the revolution as a political one, Zapata saw it as an economic one based on land reform.

Relations between Madero and Zapata deteriorated rapidly. Madero persuaded Zapata to put down his arms in exchange for a promise of land reform. The truce lasted only a few months because Zapata insisted on holding the land he had seized. In September 1911, Madero sent the brutal **General Victoriano Huerta** (Beek-toh-ryáh-no Wáyr-tah) to capture Zapata. Huerta carried out atrocities against the villagers. From his hiding place Zapata issued his Plan of Ayala, denouncing Madero as a traitor and calling for a new Revolution.

By early 1912, the rebellion had spread to northern Mexico under the separate leadership of Pascual Orozco (Oh-róhs-co) and Francisco (Pancho) Villa (Frahn-seés-coh Bée-ya). By February 1913, the rebels were marching on the National Palace in Mexico City. General Huerta seized the opportunity to capture Madero and ordered him murdered. Huerta declared himself president.

The Huerta government was a disaster. Huerta ran the country like a general. He removed liberal and revolutionary politicians and dissolved the Congress. The Church and the business and landed classes supported Huerta, declaring themselves enemies of the revolution.

Four armies rose in opposition to Huerta. In the north, **Venustiano Carranza** (Bay-noos-tyáh-no Cah-rráhn-sah), the governor of Coahuila, proclaimed himself First Chief of the Constitutionalist Army of the North and placed his men under leadership of Alvaro Obregon. Also in the north, Francisco Villa formed his army by recruiting thousands of Indians and *mestizos*. In the south, Huerta faced the army led by Zapata. The United States, too, intervened by sending troops to Veracruz. Eventually, Huerta was forced into exile.

The second revolution had been won. But the revolutionary forces were deeply divided over the crucial question of land. Zapata controlled the south and Villa controlled the north. However, by 1915, Carranza (politically the strongest) defeated Villa's army and Villa himself was retired to an hacienda given him by the government. Zapata took longer to defeat. The cost of putting down Zapata was high. Thousands of peasants were executed or deported and the villages were heavily damaged. In April 1919, Zapata himself was shot down.

While the fighting against Villa and Zapata continued, the Constituent Assembly was deciding the future of Mexico. The Assembly met in Queretaro (Kay-ráy-tah-roh) in November 1916 to write a new constitution. The convention was dominated by men from rising *mestizo* class—professionals, teachers, and bureaucrats. These were men whose ambitions had been blocked during the dictatorship of Diaz.

The delegates to the convention were not revolutionaries, but they strongly disliked the church, foreigners, large landowners, industrialists, and dictators. They wanted a nation ruled by true Mexicans—Indians and *mestizos*—rather than by descendants of the Spaniards and other foreigners.

The Queretaro Constitution of 1917, as the document is called, remains in effect today. The constitution sets up a federal structure similar to that of the United States in which the national government and the states share powers. It sets up a national government based on separation of powers for the executive, legislative, and judicial branches of government, although the president is much more powerful that the other branches of the government. The president, however, is limited to serving one six-year term. The constitution gives the government control over the country's natural resources, pledges land reform, and insures the civil liberties of citizens.

CHRONOLOGY CHART

Mexico's Early Civilizations

1200 B.C.

300 B.C.

150 A.D.

1325 A.D.

Spanish Conquest of Mexico

1519

1521

Colonialism in Mexico

1519

1531

1542

1700

Mexico Gains Independence

1810

1815

1820

1821

Troubles for the New Nation

1822

1835

1845

1846

1848

Emperor Maximilian and Porfirio Diaz

1850s

1862

1867

1876

1884

The Revolution of 1910

1910

1911

1912

1915

1917

HISTORICAL THEMES WORKSHEET

For each of the following historical themes in Mexican history, cite examples from your chronology chart that support the theme.

The struggle for political stability

The struggle for equality

The struggle for freedom from economic want

The struggle for freedom from domination by foreigners and the Church

89

BIOGRAPHICAL SKETCHES OF MEXICAN NATIONAL HEROES

Cuauhtémoc (c.a. 1502 - 1525)

The Mexican people do not regard the Aztec ruler Moctezuma as a hero. They believe he could have done more to keep Cortés from entering Mexico.

On the other hand, most Mexicans do see Moctezuma's nephew, Cuauhtémoc (Koo-ow-táy-mohc) as a hero. Only 18 when he became the Aztec ruler, Cuauhtémoc assumed leadership of a population greatly weakened by smallpox. Cuauhtémoc prepared the people for a long and savage war with the Spaniards of Tenochtitlan.

The battle raged for weeks. When Cortés realized that he would not be able to win the street fighting, he developed another strategy. He decided to cut off the supply of food and water to the residents of the city. He did this by cutting the aqueducts and blockading the island on which the city of Tenochtitlan was located. He also destroyed the temples and palaces that protected the Aztecs.

Although the Aztecs resisted for as long as they could, the Spaniards eventually defeated them. Cuauhtémoc was captured while attempting to escape by canoe. He was taken to Cortés, to whom he said:

> I have done everything in my power to defend myself and my people, and everything that it was my duty to do, to avoid the pass in which I now find myself. You may do with me whatever you wish, so kill me, for that will be best.

Instead of killing him, Cortés ordered his men to torture Cuauhtémoc and other Aztec leaders. The Spaniards hoped to learn where any riches were hidden. The torture continued for months. Cuauhtémoc was eventually hanged by the Spaniards.

Cuauhtémoc, whose name means "Falling Eagle," symbolizes courage and standing up for Mexico. He has been honored with a statue in central Mexico City.

Father Miguel Hidalgo y Costilla (1753-1811)

Father Miguel Hidalgo y Costilla (Mee-gáyl Ee-dáhl-goh ee Cohs-tée-ya) was born into a *criollo* family. His father was the manager of a hacienda. As a student at the Catholic seminary, Hidalgo studied Latin, Indian languages, and, of course, theology.

Father Hidalgo did not become an average priest. While teaching at a Catholic college, he challenged many Church teachings. There were rumors that he read banned books, gambled, danced, and had a mistress. Not only was Hidalgo unpopular among church leaders, he was actually put on trial before the Church court. The charges against him could not be proven, however.

Following the trial, the Church banished Father Hidalgo to a small church in Dolores. Hidalgo worked hard to help the poor people of this rural area improve their lives.

Meanwhile, Hidalgo and a group of friends concerned about the Indians began plotting an uprising to overthrow the Spanish. The date December 10, 1810, was chosen for the uprising, but word of the plot was leaked to the Spanish authorities in Mexico City.

Father Hidalgo decided to move up the date for the uprising. On September 16, he called the people to church by ringing the church bells. He gave a passionate speech:

> Will you free yourselves? Will you recover the lands stolen three hundred years ago from your forefathers by the hated Spaniards? We must act at once... Will you not defend your religion and your rights as true patriots? Long live our Lady of Guadalupe! Death to bad government!

Those gathered at the church made a banner showing the Virgin of Guadalupe. They then marched toward San Miguel. By the time they reached the city, several hundred more Indians and mestizos had joined the band. Father Hidalgo called for the Spanish leader of San Miguel to surrender. When he refused, Hidalgo's makeshift army attacked. Casualties were high.

Within a month, Father Hidalgo's army had swelled to 80,000 and was headed for Mexico City. Because he feared his band was not ready for a full-scale battle, Father Hidalgo headed north. He was stopped by General Calleja (Cah-yáy-hah), found guilty of heresy and treason in a Church trials, and executed by firing squad.

The revolution Father Hidalgo started lasted another ten years. This unusual priest remained its most important symbol.

Benito Juarez (1806 - 1872)

Benito Juarez (Bay-née-toh Huáh-res) was a Zapotec Indian from the Mexican state of Oaxaca. Orphaned at age 3, he lived with an uncle until he was 12. At that tender age, he set out on foot for the state capital, 41 miles away. When he arrived, he found a job in the home of a Franciscan monk who helped him learn Spanish and paid for his education.

After completing his law degree, Juarez returned to Oaxaca. He helped poor villagers challenge the high fees charged by the priests for performing religious rites. He also served on the city council and in the state legislature. Eventually, he became governor of the state. He built schools and encouraged girls to get an education, a position that was unusual at the time. He worked to develop the economy of the state and to pay off its large debt.

Juarez then became involved in national politics, serving first as secretary of justice. In that position, he worked to limit the power of the military and Church courts. When he was elected president, he encouraged those who disagreed with him to speak up, another unusual position. He faced serious international and economic problems, however. The country was essentially bankrupt when Juarez took office. European nations to whom Mexico owed money invaded the country in 1861. By 1863, they had set up Maximilian as the emperor of Mexico. Juarez was first jailed and then exiled. Although he asked President Lincoln for assistance, the Civil War was draining U.S. resources and little could be done to help Mexico.

In 1867, Maximilian was overthrown and Juarez returned to Mexico City to the cheers of thousands. Elected to a third term as president, Juarez worked hard to develop the economic and educational systems. He believed that a strong citizenry would help maintain the Mexican republic. Juarez died of a heart attack while serving as president.

Lázaro Cárdenas (1895 - 1970)

Lázaro Cárdenas (Láh-sah-roh Cár-day-nahs) was from the Mexican state of Michoacan. He became governor of that state in 1928. He opened many new schools, which he visited personally to encourage students and teachers. He helped labor unions get started and saw to it that some land in the state was redistributed. He sought advice from the people directly. All of these attitudes were unusual and very different from those of most leaders at the national level.

In 1934, Cárdenas was elected president of Mexico. He immediately made many reforms, starting with his own salary, which was cut in half. He gave many other government workers raises and better benefits. he continued to listed carefully to what everyday people had to say.

Cárdenas's main concern was land reform. Millions of poor Mexicans still owned no land. During Cárdenas's presidency, one-third of the people received some land (although much was not of high quality). Although many problems remained, the land reform Cárdenas was able to achieve helped the peasants regain their trust in the revolution.

Cárdenas also continued other reforms he had begun at the state level. He spent millions on education, arguing that public education should not focus on the teachings of the Church. He also continued to help workers form labor unions and to rid unions of corruption.

Cárdenas is especially remembered for his leadership during a dispute with the United States. U.S. and European companies were making huge profits on Mexican oil, but they would not give Mexican workers decent salaries. The case was taken to court, and the Mexican Supreme Court ordered the oil companies to increase salaries and provide better benefits for workers. The companies still refused! At that, Cárdenas ordered the properties of the companies seized by the Mexican government. The citizens of Mexico City celebrated this courageous act.

Questioning Strategies for the Interview Panel

The following questions are designed to help you conduct your interviews of the people who will appear before your panel. Many more questions can be asked, and you should not hesitate to do so.

1. What is the time period? What problems is Mexico facing during this period? What appears to be the cause of the problems?

2. What are your goals for Mexico and the Mexican people? What measures did you take to achieve these goals?

3. How effective were your policies? What do you think might be some of the consequences of your actions?

4. How do your goals, and the measures you took to achieve them, reflect the general themes of Mexican history?

5. Why do the Mexican people admire you, today? What specific things have you done to earn their respect and loyalty? What do you consider are the most important qualities in a leader?

3

LAW AND AUTHORITY IN THE AZTEC EMPIRE

Introduction: This lesson explores the sources and functions of law and authority in the Aztec Empire. Students learn how authority was exercised through the government, the social structure, and the family. Students also examine laws designed to protect the integrity of the family, social order, and the security of persons and property.

Objectives: Students will be able to:

1. Describe how the Aztecs used authority to regulate individual behavior.

2. Create a law using pictorial language.

3. Infer important values in a society by understanding some of its laws and how individuals and institutions in the society use authority.

Time: 2 class periods

Materials: Copies of Handouts M-6, M-7, and M-8; colored pencils or markers

Procedure:

1. Begin the lesson by discussing with the class how they feel about the fact that so many rules regulate their daily activities. Ask them to identify people who exercise authority over them.

2. Distribute Handout M-6 and ask students to read the first two paragraphs. Discuss the meaning of authority and the sources of authority, making sure students understand that custom, institutions, laws, and moral principles are sources of authority. Also discuss the uses of authority in society.

3. Allow time for the students to read the remainder of the handout. Divide the class into groups of three and ask students to respond to the questions in the "What Do You Think?" section at the end. You may want to check for understanding of the material before students begin their group work. Do this by discussing the organization of the government, social structure, and family. When students have concluded their group work, discuss their responses to the questions.

4. Distribute Handout M-7, asking students to follow the instructions on the handout. You may want to provide colored pencils or other art materials for their drawings. Students may work individually or in groups of three. Instruct students that before they begin their drawings, they should first write out their laws on a separate sheet of paper. After students have completed their drawings, ask them to share their work with the class.

5. Distribute Handout M-8 Tell students to read the material and identify laws that may be similar to the ones they created in the previous step.

6. Divide the class into groups of three and have them respond to the questions in the "What Do You Think?" section of the materials. Ask them to share their responses with the class. The questions are designed as a means of bringing closure to the lesson.

HOW THE AZTECS USED AUTHORITY TO REGULATE INDIVIDUAL BEHAVIOR

Do you think there are too many rules? Nearly everything we do is governed by some type of rule. If we think about it, we can cite numerous examples of people who have authority to govern us and to regulate our behavior. Parents, teachers, police officers, and government officials are just some of the people who use authority to control our actions. Having authority means having the right to tell others what to do. Authority, and how we use it, comes from a society's customs, institutions, laws, and principles of morality.

Have you ever wondered what might happen if there were no rules or people in authority? What problems might arise? Every society uses authority to help it solve problems. Authority can help us protect our rights and freedoms; it can be used to ensure fair distribution of resources and burdens; and it can help us manage conflicts and disputes.

In this lesson you will learn how the Aztec civilization of central Mexico used authority to organize and manage their society. The way the Aztecs set up their government, their social structure, and the family regulated the behavior of the people who lived in the society.

Authority of Aztec Government

Authority at the highest level in Aztec society was based on a complex governmental structure called the **city-state**. A city-state included a large community or city, the surrounding land, and smaller dependent villages. Central Mexico had many city-states of varying sizes and importance. The area, however, was dominated by three city-states bound together by an agreement called the Triple Alliance. The alliance included the cities of Tenochtitlan, Texcoco, and Talcopan. The alliance was dominated by a powerful ruler, or *gran rey* (ray), who lived in Tenochtitlan. The *gran rey* we remember today was Moctezuma.

The Triple Alliance created a complicated web of partnerships and hostilities with their neighbors. They treated some tribes as allies and others as enemies. In this manner the Aztecs were assured many trading partners, plenty of opportunities to train their warriors, and a steady supply of human victims for sacrifice to the gods.

The exercise of authority in each city in the alliance was directed by a ruler called a *tlatoani* (tlah-toh-áh-nee). The *tlatoani* had authority to wage war, form alliances with other city states, and administer conquered territories. At home the *tlatoani* had authority to run the affairs of the city, serve as a judge, and supervise religious festivals. The *tlatoani* also served in the court of the dominant *tlatoani*, or *gran rey*, in Tenochtitlan.

The *tlatoani* was basically a monarch. His authority was hereditary (by family) and he held it by divine right. He was the earthly representative of the gods. Selection of a *tlatoani* was made by the Council of Four. The members of the council were all from one family. The candidates, too, were members of that same family. To qualify, each candidate must have proved his ability in battle and have the skills to speak well and be diplomatic. Basically, the Council of Four decided who in the family was qualified to rule. When a *tlatoani* was chosen in one city, the other two cities in the alliance had to agree to the choice. A *tlatoani* served for life.

A supreme council of 12 members assisted the *tlatoani* in the exercise of his authority. All political matters were supervised by the supreme council. Four members of the council were in charge of warfare and four supervised diplomacy. The other four administered justice by serving as judges.

Each city-state was divided into four districts called the *gran capulli* (cahl-póo-yee). Each *gran calpulli* chose three members of the supreme council. A district was further subdivided into neighborhoods also called *calpulli*. What these subdivisions were and how they were decided is not entirely clear. *Calpulli* appears to be a word applied to many different territorial divisions within the city-state.

Authority within the *calpulli* was placed in the hands of a local leader. His authority appears similar to that of a parent. The leader acted as a father-figure to the residents of the neighborhood. He had the authority to decide how the residents could use the common lands of the *calpulli*. He also collected from the residents the tribute, a form of taxation, owed by the *calpulli* to the city-state. Frequently, he was called to represent his neighbors in court.

Authority Within the Social Structure

In Aztec society everyone belonged to a social class. Your social status was hereditary; you were born into it. Because a family's status imposed certain rules of behavior on people, the Aztec social structure exercised authority over people's lives. People only had rights and responsibilities according to their family's status.

Think of social class as a pyramid. At the top was the *tlatoani* and his family. Next were the four heads of the *capulli* and their families. They received their status from the *tlatoani* and were responsible to him. At the third level of the pyramid were the nobles. They were the "children," as their title implied, of the leaders. A noble family owed service to both the tlatoani and the *capulli*.

At the bottom of the pyramid were the commoners. They were the largest group; they were responsible for paying tribute and providing service to the *capulli*. Commoners could earn a higher status through military service. Indeed, some ranks at the nobility level were reserved for this purpose.

A warrior's social standing depended on his ability. If he captured an enemy in battle, he earned certain titles and the right to wear the hairstyle and clothing associated with his new status. The reputation of the enemy and the number of captives taken earned additional titles and status. One responsibility of a warrior was to offer his captives for human sacrifice in religious ceremonies. At the conclusion of the ceremony, the body was returned to the warrior, who then gave a splendid cannibalistic banquet for his family and friends.

Slavery, too, was a class, but it was not hereditary. You could acquire this status by selling yourself, or your children, into slavery. In this way, slavery was an economic condition eventually removed by working off the debt. Slaves kept their individual liberty. Some people were slaves because the courts sentenced them to slavery for crimes committed. Slaves who misbehaved were punished publicly and could be sold to new masters. A slave who was sold four times because of negative behavior was sacrificed to the gods.

Authority of the Family

The Aztec family was the basic unit of the society. As such, it exercised the greatest authority over the individual. A family was formed through marriage, and the father and mother were the basis of the blood family. Having more than one wife was legal, but such relationships were secondary. Marriage among blood relatives was strictly prohibited.

An Aztec family was very large, including all the people who shared a common patio. The patio was usually a fenced area that included one or more houses. The family members were parents and children, secondary wives and their children, aunts and uncles and their children, grandparents, domestic servants, and slaves.

Family authority resided in the father. It was absolute. If children were incorrigible, the father could sell them into slavery. The older relatives decided the price, conditions, and length of the child's enslavement. Female children were under the authority of the mother, who trained them to carry on the duties of motherhood. A male child lived with the family until he reached puberty. He then went to live in a bachelor dormitory, where he trained for either public service or the military. The young man lived there until he married. At marriage he and the bride returned to live with his family.

Many rights that people enjoyed were family rights. The most important right was the right of inheritance. This right combined the two most important ideals of the society, family and property. At the father's death, the eldest living son inherited the family's property and the dominant position of authority. Occasionally, a male from a secondary marriage was the inheritor. Along with property and authority came the responsibility to care for the family and to pay the family tribute to the *calpulli*.

The right to property included personal and real property (i.e., property that could be moved and property that could not). The family had rights to the land it occupied as living space. It also had rights to land for cultivation. The family farm was located some distance from the living quarters. The Aztecs recognized the right to transfer property through sale, loan, exchange, rent, donation, or judicial order.

The family also had a right to engage in trade. Women and children were permitted to buy and sell goods in the marketplace if they had the permission of the father. This right of trade extended to commerce with tribes outside the city-state. Any failure to complete the terms of a contract was punishable by the courts. However, having no money to pay your debts was not a punishable offense.

Using Authority to Regulate Behavior

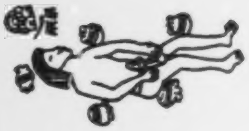
We have already seen how the social structure and the family informally exercised authority to regulate individual behavior. Both class and family had certain rights and imposed certain roles and responsibilities on their members. Individuals were reminded often of their responsibilities and of the proper behavior associated with their status.

The Aztecs had two other systems for regulating individual behavior. One was religion. Certain diseases or physical impairments were seen as punishment from the spiritual world. People believed that the gods visited those who did not follow the rules. The gods inflicted diseases, swelling of body parts, or lameness. If someone was troubled by these problems, the source of the suffering was clear. The second system for regulating behavior was the law, which formally defined acceptable behavior. The punishment for violating a law was quick and severe.

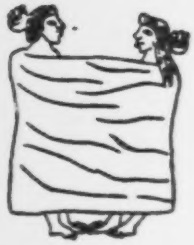
The Authority of the Law

Aztec language was unwritten, making it difficult to enact too many laws. It was hard to illustrate abstract ideas through a pictographic language. The people had to memorize the laws, so there couldn't be too many of them. Because laws were unwritten and were passed on by memory, they had the characteristic of custom. How a matter had been handled in the past became the traditional method for deciding similar situations in the future. Custom determined the decisions of the courts and the types of sentences they imposed on those who violated the law.

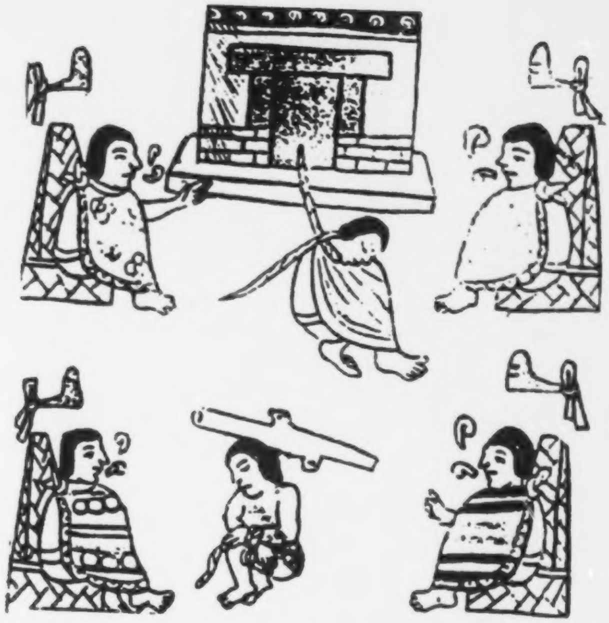
Aztec law recognized two levels of criminal behavior: minor offenses and serious crimes. Minor offenses included telling untruths or gossip. Liars and gossips had their lips cut so they could be recognized by others. Serious offenses included crimes against people and property, crimes against the family, and crimes against public order.



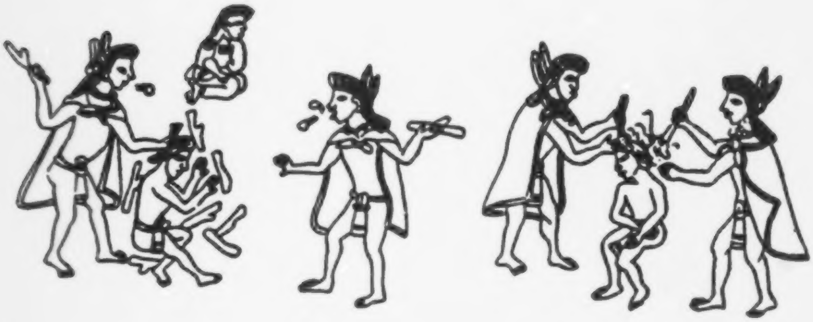
Death to a thief



Punishment for adultery



Punishments for those who violated the morals and social customs



Other punishments

The Authority of the Courts

In each city-state, four members of the supreme council served as judges. The judges lived in the palace; each had a chamber where he heard cases. Only serious cases, civil and criminal, were heard by these courts. People travelled to the palace to appear before a judge. All judicial decisions were issued from the palace.

An executor assisted each judge. The judge decided the case, and the executor announced the decision. The executor's responsibility was to forward the decision to the sheriff and to make sure the sheriff carried out the sentence. For noblemen as well as commoners, imposition of sentence was swift as well as harsh. Prisons did not exist as a means of punishment. The Aztecs did not believe that anyone could be useless to society. Jails were only holding pens for persons awaiting trial or imposition of sentence.

Lower courts existed at the *calpulli* level. Minor cases were heard by judges who actually lived in the neighborhood. The local judges had authority to examine witnesses and settle disputes, but they could not pass sentence until the state judges reviewed the case. The state judges met every 80 days to review lower court cases.

At the top of the judicial system was, of course, the ruler. His chamber was located above the other chambers, and when acting judicially, the king did not consult the supreme council. Criminal cases could be appealed to the ruler, but in civil cases no means of appeal existed. Apparently, no death sentence was carried out without notifying the ruler.’

What Do You Think?

1. How would you define authority? Do you think the way the Aztecs exercised authority differs from the way societies use authority today? Why or why not?

2. How did the Aztecs use authority to establish order in their society? How did they use authority to settle disputes? How did they use authority to protect rights?

3. How did not having a written language limit the authority of the law? How did custom limit the authority of the courts?

4. What inferences can you make about which values were important in Aztec society by studying the people and institutions who exercised authority?

CREATE A LAW

You have learned how the Aztecs used law and authority to govern their empire. Suppose you were a *tlatoani* or a member of the supreme council. Create a law for the people living in your city-state. Remember, you have no written language. You must illustrate your law through pictures. Try to make your law as clear and understandable as possible; the citizens will have to memorize it.

1. A law giving women and children the right to trade in the marketplace.

2. A law prohibiting public drunkeness.

3. A law that directs commoners to pay an annual tribute to the city-state.

4. A law prohibiting a particular behavior.

CRIME AND PUNISHMENT IN AZTEC SOCIETY

The following are examples of serious violations of the law and how offenders were punished.

- **Murder** and **rape** were crimes against the person. An act of homicide met with the death penalty, either by hanging or drowning. If one should murder a woman's husband, and the woman was willing to forgive the crime, the murderer then became the slave of that woman. He was to care and earn a living for the children of the deceased. Rape, too, was punishable by death.
- **Adultery** and **abortion** were crimes against the family. Adulterous acts were punished by torture and stoning to death in the market place. No matter one's social status, one was not spared this severe penalty. If the adulterers were of the upper classes, the bodies were tarred and feathered before burning. Abortion was punished by hanging both the mother and the person performing the abortion.
- **Burglary** and **robbery** were crimes against property. Theft from a home meant placement in slavery to the person whose property was stolen. The thief, now a slave, could be sold for the amount of the property stolen. Robbery on first offense was punished by slavery and on second offense by death. In other types of theft, the offender was given an opportunity to pay for the item(s); if he did not do so, he was enslaved. Repeated acts of thievery resulted in punishment by death.
- **Treason** was a crime against public order. A slave who committed treason against his master was punished by death. Treason committed by passing information to an enemy during war resulted in the dismemberment of one's body, the confiscation of all properties, and enslavement of all the family.
- **Drunkenness** was a serious crime that caused disruption of the public order. Drunkenness by a public official was punishable by death. Liquor could not be consumed without the permission of one's superior or of a judge, and permission was usually granted only to persons who were ill or over the age of 70. At weddings and feasts, those over the age of 30 were allowed two cups of pulque, a liquor made from cactus plants. Drunken behavior among commoners was punished by shearing their hair in the public plaza. Alcoholics were not considered worthy to live in the neighborhood, and their homes were destroyed; they were also denied employment.

Certain crimes were offenses associated with one's status or occupation. Some laws applied to land ownership, to the responsibility of public officials, and to the duties of soldiers in battle. The following are some examples.

- The use of clothing, ornamentation, and housing was carefully regulated by law. Only the ruler could wear the finest cloaks of fur.
- Priests who kept concubines were executed; the "tax" collector who collected too much also met with death. So did the judge who took bribes.
- Judges were expected to be ethical and moral persons. Minor transgressions were admonished by the other judges; serious violations of ethics were punished by the king, usually by death.
- Disobedience on the battlefield resulted in death by beheading. A major objective of Aztec warfare was the capture of enemy soldiers. If one took another warrior's captive, the offense resulted in death by hanging.

What Do You Think?

1. How did the law protect the family? Do you think these laws were fair? Why or why not?

2. How did the law protect property? Which do you think the Aztecs valued more, life or property? Explain the reasons for your response.

3. How did the law protect public order and public morals? Do you think a government should use its authority for such purposes?

4. Do you think it was fair that some classes in Aztec society were treated more harshly than others? Why or why not?

5. What inferences about Aztec society can we reasonably make from these examples of Aztec law? Do you think any of these inferences are still valid in Mexico today? Why or why not?

4

THE MEXICAN CONSTITUTION OF 1917

Introduction: This lesson asks students to look at the goals of the Mexican Revolution as they are expressed in the Constitution of 1917. Understanding the differences between a bill of rights that limits the powers of government and one that establishes the goals to which a nation aspires, students can begin to see law from a Mexican perspective. In addition, students examine how legal, social, and economic patterns affect the lives of everyday people.

Objectives: Students will be able to:

1. Describe the goals of Mexico's revolution of 1910.

2. Determine how the goals of the revolution are incorporated into Mexico's Constitution of 1917.

3. Analyze the differences among political, social, and economic rights.

4. Analyze the differences in bills of rights that are prohibitions against government action and those that are statements of goals.

5. Decide whether the goals of the Revolution of 1910 and the Constitution of 1917 have been achieved.

Materials: Copies of Handouts M-9, M-10, M-11, and M-12

Preparation: You may wish to make arrangements for a guest speaker to explain Mexico's current efforts to achieve its goals.

Time Required: 2-3 class periods

Procedure:

1. Discuss with the class what rights they think they have as citizens of the United States. Do they think they have the right to a job, food and shelter, a decent standard of living? Where in the U.S. Constitution might such rights be listed? Introduce them to the idea that other nations, too, possess constitutions, not all constitutions are the same, and some of the probable difficulties in making comparisons.

2. Distribute Handout M-9. Tell students that at the conclusion of the reading they should be able to identify the goals of the Mexican Revolution of 1917 and to suggest how those goals might become a part of the constitution. Allow time for the students to read the material.

3. Draw a chart on the board listing the goals of the Revolution: land reform, labor reform, nationalism, justice, and freedom. Ask students to explain the components of each goal and for whom in society it was important. After each goal is discussed, ask the students to suggest one or two rights they would like to see written into the constitution of 1917. Record their responses on the board for later use.

4. Divide the class into small groups and ask them to respond to the questions in the "What Do You Think?" section of the handout. After 10 or 15 minutes, reconvene the class and discuss their answers.

5. Distribute Handouts M-10 and M-11. Help students identify the meaning of political and civil rights, economic rights, and social rights. Divide the class into small groups. Ask them to categorize on their worksheets the list of rights from the Constitution of 1917. When they have finished their charts, ask them to respond to the questions in the "What Do You Think?" section of their handout.

6. When students have finished the handouts, discuss their work with the entire class. Ask them to identify some of the rights they included in each category, as well as the reasons for their responses.

7. Distribute Handout M-12. Allow time for students to read the material. Ask the students to identify the legal, economic, and cultural forces that encourage the child labor discussed in this particular news story.

8. Tell the class that they will be conducting a debate to determine whether the goals of the constitution are being achieved. Write the following resolution on the board:

> RESOLVED, that the social and economic goals of the Constitution of 1917 are being met by the Mexican government.

Divide the class into groups for and against the resolution. Allow time for the student to re-read the news article and the other materials in this lesson to find supporting evidence for their positions. You may want to extend this activity by allowing students to conduct additional research in preparation for their debate.

9. After what you determine to be adequate preparation time, conduct the debate. The groups who support the resolution will present their arguments first, followed by those who oppose the resolution. In a second round, allow time for students to present rebuttal statements. Those who oppose the revolution present first, followed by those who support the resolution. At the conclusion, poll students on their stand for or against the resolution.

10. Bring closure to the lesson by discussing the following questions with the class:

- How might the work experiences of youth in the United States differ from the experiences of youth in Mexico?
- In what ways do laws, economics, and cultural patterns interact? For example, although child labor laws exist, economics prevent the government from hiring enough inspectors to enforce them.
- What are the advantages of having a bill of rights that sets limits on the powers of government? What might be some disadvantages?
- What might be some advantages of having a bill of rights that is a statement of goals? What might be come disadvantages? (You may want to make reference to the United Nations Universal Declaration of Human Rights.)

THE MEXICAN CONSTITUTION OF 1917

Porfirio Diaz was president of Mexico from 1876 to 1911. His presidency was in reality a dictatorship. Diaz believed it was his destiny to rescue Mexico from its political, social, and economic problems. His solutions were to keep the Church and the rich people happy and to abolish all political activity, especially criticism of his government. Diaz censored the press and jailed many journalists.

Diaz started new industries and increased trade with other countries. He expanded the railroad system and built ports on both oceans. He invited foreigners to invest their money in Mexican agriculture and mining. The new wealth, however, never reached the poor people. The Indians and mestizos continued to live in miserable poverty. While some 3,000 families owned half of the country and lived in magnificent haciendas, millions of peasants remained landless, and laborers worked extremely long hours for very little pay.

The Revolution of 1910

The revolution against the Diaz government began in November 1910. Francisco I. Madero, a wealthy idealist who opposed the policies of Diaz, traveled all over Mexico promising the peasants and workers a change in their lives if he were elected president. Madero's popularity grew so rapidly that Diaz had him jailed. Diaz released Madero only after Diaz himself had won reelection. Madero called for an uprising against Diaz on November 20, 1910.

By October 1911, Diaz had resigned from office and Madero was elected president. While it seemed that the revolution had been won, it was just beginning.

Uprisings continued in the small towns and villages in the north and south. Anger among the poor toward the injustice and inequality of their lives ran deep. Eventually, numerous groups were fighting each other for the right to decide their future and the future of Mexico.

The purposes of the revolution were varied. The peasants wanted land reform. The laborers wanted economic and social change. The middle and upper classes wanted political power and freedom. While the politicians saw the uprising as a political one, the peasants and workers saw it as an economic revolt intended to achieve reform. In reality, the revolution touched all parts of society, including literature and art.

The following summarizes the goals of the revolution:

Land reform. The revolutionaries thought that the system of land ownership was unfair. They felt that the church, foreigners, and wealthy Mexicans had robbed the peasants of their land. As a result, the peasants were forever dependent on and in debt to those who now owned the land. They resented the loss of their land and hoped for its return.

Labor reform. The people who labored in the factories, mines, and railroads worked under hazardous conditions. Wages were low and hours were long. The laboring class had worked hard to build the industry of the country, but the profits had gone to the wealthy and to foreign investors. The laborers wanted to reduce the seven-day work week and the eleven-hour work day and to improve the wages they earned.

Nationalism. Mexicans felt they were being controlled by outsiders. The Catholic Church sent many foreign priests to Mexico. The United States had taken half of Mexico's land by treaty ending the Mexican-American War in 1848. Foreign investors had been allowed to profit from Mexico's economic development. The revolutionaries wanted Mexico's affairs to be controlled by Mexicans.

Justice and freedom. Porfirio Diaz suppressed most political activity in the country. There was neither justice for the downtrodden nor freedom for the people to speak out against the injustice of the system. If the people were effectively to participate in the political affairs of their country, they needed education. People also wanted an end to the *rurales*, or bandits who thought they had the authority to brutally police the countryside.

The Constitution of 1917

An estimated 1.5 million people died in the revolution. Even as the fighting continued in November 1916, a Constituent Assembly met to decide the future of Mexico. The convention of 209 men met in Queretaro to consider proposed changes to the old constitution. The delegates were mostly men from the rising mestizo middle class—professionals, teachers, and bureaucrats. They were men who had been denied participation during the dictatorship of Diaz and they wanted radical change as soon as possible.

The delegates did not themselves fight the revolution. Nor did they have much experience in government. The delegates did, however, have a strong dislike for the Church, foreigners, large landowners, industrialists, and dictators. They wanted a nation ruled by true Mexican—Indians and mestizos—rather then by descendants of the Spaniards, other foreigners, and the Church.

Sixty-two days after the convention met, a new constitution was presented to the nation. The Queretaro Constitution of 1917, as the document is called, reflects the goals for which the revolution was fought. It asserts Mexico's control over its natural resources and promises land reform, improved working conditions and wages, and educational opportunities.

Comparing Constitutions

Comparing the U.S. Constitution and the Queretaro Constitution of 1917 is difficult. The history, culture, and experience of the people who wrote the two documents were quite different. The Mexican colonial experience had shaped a society very unlike that which emerged from the colonial period in the United States. The goals of the Mexican Revolution of 1910 were not to achieve independence—that had been won earlier. Rather, the framers of the Constitution of 1917 sought reforms to alleviate the oppression and injustice inherited from their colonial past.

Some similarities between the two constitutions do exist. The Mexican Constitution sets up a federal structure similar to that of the United States, in which the national government and the states share certain powers. It creates a national government based on separation of powers between the executive, legislative, and judicial branches. It divides the legislative branch into two houses. The Mexican Constitution also includes a lengthy bill of rights.

One difference between the Mexican and United States constitutions is the authority granted to the president. The Mexican president has far greater authority and power than do the legislative and judicial branches. The president, however, can serve only one six-year term. A second important distinction is between the bills of rights. The Bill of Rights in the U.S. Constitution is designed to limit the authority of government. The Mexican Bill of Rights contains statements of goals—social, political, and economic.

What Do You Think?

1. Examine the Preamble to the Constitution of the United States. Why do you think it begins with the words, "We the people…"? According the the Preamble, for what purposes was the Constitution established?

2. Examine the Bill of Rights to the U.S. Constitution. What are some of the things the government may not do?

3. What do you think is the difference between a bill of right that limits the powers of government and one that establishes goals for the government?

SUMMARY OF RIGHTS FROM THE MEXICAN CONSTITUTION OF 1917

ARTICLE 1: Every person in the United Mexican States shall enjoy the guarantees granted by this Constitution, which cannot be restricted or suspended except in such cases and under such conditions as are herein provided.

ARTICLE 2: Slavery is forbidden in the United Mexican States.

ARTICLE 3: Right to a free education that is entirely apart from religious doctine.

ARTICLE 4: Men and women are equal before the law. The law shall protect the organization and development of the family. Every person has the right to decide in a free, responsible, and informed manner on the number and spacing of their children.

ARTICLE 5: No one can be prevented from the profession of their choice as long as it is not unlawful.

ARTICLE 6: The expression of ideas shall not be investigated unless it offends good morals, infringes the rights of others, incites to crime, or disturbs public order.

ARTICLE 7: Freedom of writing and publishing writings on any subject is inviolable.

ARTICLE 8: Public officials and employees shall respect the exercise of the right of petition, provided it is made in writing and in a peaceful and respectful manner, but this right may only be exercised in political manners by citizens of the Republic.

ARTICLE 9: The right to assemble or associate peaceably for any lawful purpose cannot be restricted.

ARTICLE 10: The inhabitants of the United Mexican States are entitled to have arms in their possession in their homes for their protection and legitimate defense, except those deliberately forbidden by law.

ARTICLE 11: Everyone has the right to enter and leave the Republic, to travel through its territory and to change his residence without necessity of a letter of security, passport, safe-conduct, or any other similar requirement.

ARTICLE 12: No titles of nobility or hereditary prerogatives or honors shall be granted in the United Mexican States, nor shall any effect be given to those granted by other countries.

ARTICLE 13: No one may be tried according to private laws or by special tribunals.

ARTICLE 16: No one shall be molested in his person, family, domicile, papers, or possessions except by virtue of a written order of the competent authority stating the legal grounds and justification of the action taken.

ARTICLE 19: No detention shall exceed three days without a formal order of commitment, which shall state: the offense with which the accused is charged; the elements thereof; the place, time, and circumstances; and the facts brought to light in the preliminary examination.

ARTICLE 20: In every criminal trial, the accused shall enjoy the following guarantees:

- Release on bail if crime is not punishable by more than five years in jail.
- May not be forced to testify against himself.

- Notified within 48 hours of the name of his accusor or the nature of the accusation.
- Shall be confronted with the witnesses against him.
- Shall be given time to gather witnesses and evidence in his defense.
- Entitled to a public trial.
- Shall be tried within four months.
- Shall speak for himself, or have a lawyer, or both.

ARTICLE 21: Judges shall determine all penalties.

ARTICLE 22: Extreme and unusual punishment are prohibited.

ARTICLE 23: No criminal trial shall have more than three instances.

ARTICLE 25: The state will direct national development in a way that strengthens the nation, promotes growth and employment, and a more just distribution of income and wealth... it shall permit the full exercise of liberty and dignity of individuals, groups and social classes protected by this constitution.

ARTICLE 26: Everyone is free to embrace the religion of his choice and to practice all ceremonies, devotions, or observances provided they do not offend any laws.

ARTICLE 27: Ownership of the lands and waters belong to the nation, which has the right to transfer title to private persons.

The nation can impose limitations on private property for public use.

The nation has direct ownership of all natural resources. The right to exploit or appropriate the resources will be determined by the government.

Only Mexicans have the right to own land. Foreigners can own the land under conditions established by the government.

Churches may not have real estate. All such property shall revert to the nation.

Centers of population which possess communal status [*ejidos*] have the legal capacity to enjoy common possession of the lands, forests, and waters belonging to them or which have been or may be restored to them. Provisions will be made for those who cannot prove title as well.

The state shall see to agrarian justice and ensure the security of the communal lands [tierra ejidal] and small land holdings.

ARTICLE 28: There shall be no monopolies or restrictions on free competition. Religious acts must be performed inside churches.

ARTICLE 29: In the event of invasion, serious disturbance of the public peace, or any other event which may place society in great danger of conflict, only the President of the Mexican Republic, with the consent of certain head officials, may suspend throughout the country the guarantees of this document.

ARTICLE 123: Every person is entitled to suitable work. Creation of jobs and social organization for labor shall be promoted.

The maximum work for one day shall be eight hours; for one night, seven hours.

Minors under sixteen years of age are prohibited from unhealthful or hazardous work, and work after ten o'clock. Use of labor for minors under fourteen is prohibited.

For every six days of work a worker must have at least one day of rest.

Women during pregnancy shall not perform physical labor which requires considerable effort and which could be hazardous to their health. They are entitled to six weeks leave prior to childbirth and six weeks leave thereafter and shall receive full wages and retain their employment rights acquired under their labor contract.

Minimum wage must be sufficient to satisfy the normal material, social, and cultural needs of the head of a family and provide for the education of his children.

Equal wages for equal work.

Wages must be paid in money of legal tender.

Both employers and workers shall have the right to organize for the defense of their respective interests by forming unions.

The law shall recognize strikes and lockouts.

CATEGORIES OF RIGHTS

The rights listed in the Mexican Constitution of 1917 can be divided into three general categories: political and civil rights; economic rights; and social rights. Find examples of each to help you illustrate the chart below.

Political and civil rights. Right to freedom of expression, religion, assembly, privacy, and the right to be treated equally and fairly by the government.

Economic rights. Right to property, employment, medical care, and food, clothing and shelter.

Social rights. Rights associated with the family, education, culture.

What Do You Think?

1. Which rights listed above are most like the rights that appear in the U.S. Constitution?

2. How does the statement of rights in the Mexican Constitution of 1917 reflect the goals of the Revolution? Which of the rights listed here might be similar to the ones you discussed earlier in class?

3. What problems do you predict might arise from some of the rights listed in this constitution? Do these problems differ from the problems that arise with the U.S. Constitution?

WORKING CHILDREN: UNDERAGE LABORERS FILL MEXICAN FACTORIES

Vicente Guerrero, 12, Quits School for Footware Plant; Dad: "We Eat Better Now"

Getting Used to Glue Fumes

By Matt Moffett
Staff Reporter of *The Wall Street Journal*

Leon, Mexico—When Vicente Guerrero reported for work at the shoe factory, he had to leave his yo-yo with the guard at the door. Then Vicente, who had just turned 12 years old, was led to his place on the assembly line: a tall vertical lever attached to a press that bonds the soles of sneakers to the uppers.

The lever is so heavy that Vicente has to throw all his 90 pounds backward to yank the stiff steel bar downward.

Vicente's journey from the front-row desk of his schoolroom to the factory assembly line was charted by adults: impoverished parents, a heedless employer, hapless regulators, and impotent educators. "I figure work must be good for me, because many older people have helped put me here," says Vicente, shaking his hair out of his big, dark eyes. "And in the factory I get to meet lots of other boys."

It's illegal in Mexico to hire children under 14, but the Mexico City Assembly recently estimated that anywhere from five to 10 million children are employed illegally, and often on hazardous jobs. Economic necessity is stronger than a theoretical prohibition.

Young Vicente Guerrero's life exemplifies both the poverty that forces children to seek work and the porous regulatory system that makes it all too easy for them to find jobs. In the shantytown where Vicente lives it is customary for small and medium-sized factories to employ boy shoemakers known as *zorritas*, or little foxes.

"My father says I was lucky to have so many years to be lazy before I went to work," says Vicente. His father, Patricio Guerrero, entered the shoe factories of Guanajuato at the age of seven. Mr. Guerrero lives in a tumbledown brick shell about the size and shape of a baseball dugout. It is home to 25 people. Vicente, to get some privacy in the bedroom he shares with eight other children, occasionally rigs a crude tent from the laundry on the clotheslines crisscrossing the hut.

School was the one place Vicente had no problem setting himself apart from other kids. Classmates, awed by his math skills, called him the "wizard." Nearly as adept in other subjects, Vicente finished first among 105 sixth-graders in a general-knowledge exam. Children are required by law to stay in school through the sixth grade.

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"Well," his father said, "it seems that you've learned everything you can in school." Mr. Guerrero then laid his plans for Vicente's next lesson in life. In a few weeks, there would be an opening at Deportes (sports) Mike, the athletic shoe factory. Vicente would earn 100,000 pesos a week, about $34.

At that time money was tighter than usual for the Guerreros: two members of the household had been laid off, and a cousin in the U.S. had stopped sending money home.

Last August Vicente was introduced to the Deportes Mike assembly line. About a dozen of the 50 workers were underage boys. One youth, his cheeks bulging with sharp tacks, hammered at some baseball shoes. A tiny 10-year-old was napping in a crate that he should have been filling with shoe molds. A bigger boy was running a stamping machine. The bandage wrapped around the stamper's hand gave Vicente an uneasy feeling.

When a teacher came by the factory to chide school dropouts, one of the boys rebuked her. "I'm earning 180,000 pesos a week," he said. "What do you make?" The teacher, whose weekly salary is 120,000 pesos, could say nothing.

Vicente puts in an eight-hour workday. He spends most of his time on dirty work: smearing glue onto the soles of shoes with his hands. The can of glue is marked "toxic substances... prolonged or repeated inhalation causes grave health damage; do not leave in the reach of minors." All the boys ignore the warning.

Impossible to ignore is the sharp, sickening odor of the glue. The only ventilation in the factory is from slits in the wall where bricks were removed and from a window near Vicente that opens only halfway. Deportes Mike's superintendent doesn't recall a government health inspector coming around in the nine years the plant has been open.

"The smell makes you choke," Vicente says, "but *el patron* says I'll get used to it." El patron, the factory owner, is Alfredo Hidalgo. "These kinds of problems will help make a man of him," Mr. Hidalgo says. "It's a tradition here that boys grow up quickly." Upholding tradition has been good for Mr. Hidalgo's business: Vicente and the other zorritas generally are paid less than adult workers.

The system makes protecting the zorritas very, very difficult. The national labor code gives the federal government jurisdiction over only a limited number of industries.

At the state labor ministry, five child labor inspectors oversee 22,000 businesses. It would take them more than two decades to visit all the enterprises. Because child labor violations weren't even punishable by fines until very recently, state regulators say they have a hard time getting the tradition-bound employers they do visit to take them seriously.

The zorrita tradition is unlikely to face any time soon. "We eat better now that Vicente works," says Patricio Guerrero, watching his wife stir a skillet of chicken. "And Vicente has a few pesos left over so he can enjoy being a boy."

5

CHURCH/STATE RELATIONS IN THE MEXICAN CONSTITUTION

Introduction: The Mexican Constitution severely limits the power of religious institutions, including the Catholic Church, even though the vast majority of its citizens are Catholics. This lesson provides students with a short history of church/state relations in Mexico, focusing on the issues underlying the anti-clerical provisions in the Constitution of 1917. Through participation in an imaginary negotiation session designed to define this "new legal position," students grapple with the appropriate role of religion in Mexican society and the relationship between church and state.

Objectives: Students will be able to:

1. Explain why the drafters of the Mexican Constitution of 1917 wanted to limit the powers and activities of the Catholic Church.

2. Analyze the arguments against the constitutional limitations on the Church from the perspective of the Catholic Church in Mexico.

3. Describe how Mexico has contained the conflict between church and state during the past 60 years.

Materials: Copies of Handout M-13, M-14, and M-15 for all students; enough copies of each role card for one-third of the class to have each

Time Required: 1-2 class periods

Procedure:

1. Have students read and complete Handout M-13. To reserve more class time for discussion and role-play, Handout M-13 is best given as a homework assignment.

2. Briefly have students share their responses to Handout M-13. Ask them to predict how they think the conflict ended.

3. Distribute Handout M-14 to the entire class. Ask students what they think about the way in which the conflict was finally resolved. Why do they think the Mexican government chose to leave the anti-church provisions in the Constitution, but not enforce them? (The Constitution reflects ideal goals, but the realities of Mexican society required compromise. However, as long as the provisions are in the Constitution, they can be called upon if needed.) To what extent have Mexicans achieved the goal of limited church power?

4. Tell the class that the issue of church-state relations remains alive in Mexico today. In fact, in a November 1991 state-of-the-union speech, president Carlos Salinas suggested that the legal position of churches be revised. Since the end of the Cristero rebellion, and especially since World War II, the Catholic Church and the government have been on increasingly friendly terms. Many people feel the Constitution is out-of-date and should be brought into line with reality. Other Mexicans remain very distrustful of the potential power of organized churches to amass great quantities of wealth and control the political process.

5. Tell the class that they will be role-playing the kind of discussions and negotiations that Mexicans engage in as they grapple with the proper legal status of churches today. As in the negotiations between the Church and the government following the Cristero rebellion, the use of a neutral mediator can help parties with very different perspectives communicate calmly with each other and prevent disagreements from escalating into new conflicts.

6. Divide the class into three groups, assigning the roles of Politician, Priest, and Mediator. Provide the appropriate role card to students in each group. Provide all students with Handout M-15. Allow students assigned identical roles to meet in small groups to develop arguments and strategies for the negotiating session.

7. Set up triads of politician, priest, and mediator to engage in negotiations. The negotiations of each triad should take place simultaneously, thus giving every student an opportunity to engage in the role play. Each side should present its arguments. The mediator should ask questions and help the two sides find common ground and explore options. What should the role of religion and churches in Mexico be? Should the provisions of the constitution be changed? What is in the best interests of Mexico's people? Provide approximately 15 minutes for students to engage in negotiations.

8. Ask mediators to report on the agreements their triads reached. List some of the options that different groups developed. What were the major stumbling blocks to reaching agreement? How were these overcome?

9. Engage the class in a discussion of how much their knowledge of the history of the Catholic Church in Mexico influenced the outcome of their negotiation. Do they think they would come to the same conclusions if they were considering the United States rather than Mexico? Why or why not? Use the questions below as the basis for class discussion, small-group debates, or written assignments.

- Voltaire, who lived in France between 1694 and 1778, said,

  > If there were one religion in England, its despotism would be terrible. If there were two, they would destroy each other; but there are thirty, and therefore they live in peace and harmony.

  How would you relate his comments to the history of religion in Mexico? In regard to Mexico, do you think Voltaire was right?

  How would you relate his comments to the history of religion in the United States? In regard to the U.S., do you think he was right?

- The Mexican Constitution of 1917 contains numerous provisions concerning the regulation of religion and church/state relations. In regard to religion, the U.S. Constitution says only:

  > Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

Why do you think the two Constitutions are so different in this respect?

Extension/Enrichment:

Offer extra credit to students who conduct a library search for newspaper and magazine articles that report on efforts to change the status of churches in Mexico since President Salinas' speech in November 1991. Have students report back to the class on what they have learned.

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HISTORY OF CHURCH/STATE RELATIONS IN MEXICO: BACKGROUND

The proper relationship between religion and government has been debated for hundreds of years. The writers of both the U.S. Constitution of 1787 and the Mexican Constitution of 1917 felt the issue important enough to include sections in their constitutions designed to regulate the relationship of church and state. When the U.S. Constitution was being written, the former British colonies were home to many different religious sects that had fled persecution in Europe. None of these churches had popular or political dominance throughout the entire new nation, although many states had established religions. The concern of the drafters of the U.S. Constitution was therefore to maintain separation of church and state at the national level and insure continued freedom of religious expression.

The measures regulating religion and its relationship to government in the Mexican Constitution are the result of a very different history. Beginning with Columbus, Catholicism played an important role in the Spanish conquest of the New World. Spanish royalty, which had just completed the "reconquest" of Spain from the Muslims, was very concerned with maintaining their image of the "Reyes Catolicase" or "Catholic Kings." The image of the Spanish as "Soldiers of God" was helped by converting New World peoples to the "True Religion." Religious conversion of the American Indians also helped legitimize the wars of conquest against the Aztecs and the Incas and was used to excuse the economic and political domination of Europeans over Native American peoples.

The Catholic Church quickly established itself in Mexico by destroying the most obvious symbols of native American religions, such as pyramids and religious shrines, and by building Catholic churches in their place. The Spanish were very successful in converting the Mexican Indians, who actually combined many of their own religious beliefs and rituals with Spanish Catholicism. The resulting blend of religious practices produced a rich tradition of culture, art, and popular religion that continues to influence Mexican life today.

For 300 years of Spanish colonial rule, the Catholic Church worked side by side with the colonial government. During this time, it developed significant economic, social, and political power.

Economically, the Church claimed the right to receive a fixed percentage of the produce (crops or herds) from all agricultural lands (an obligatory tithe). It was the main money-lender in colonial Mexico and over the years came to control tremendous amounts of urban property.

Socially, the Church was involved in the lives of people from cradle to grave. Church resources were used to run hospitals and orphanages, as well as almost all schools in colonial Mexico. The church building itself was the social meeting place for the community. Each community had a special patron saint to whom people looked for guidance.

Politically, the Church was in a privileged position. Priests and others associated with the Church could only be tried for crimes in special Church courts. The Church maintained all birth and death registers, controlled the cemeteries, and blessed all legal marriages. Its role in the day-to-day lives of the people together with its economic wealth put the Church in a position to have considerable influence in political decisions.

Following Mexican independence in 1821, things began to change. The Church had not supported the movement for independence from Spain. After independence, it joined wealthy Mexicans of Spanish descent (known as *criollos*) and the military in forming a conservative coalition that tried to keep things pretty much as they had been during the colonial period. As a result, the Church became a major target of liberal politicians and intellectuals who were influenced by the ideas of the European Enlightenment and the American and French Revolutions. They saw the Church as conservative and anti-modern.

The strong traditional values of the Catholic Church emphasized the importance of ultimate loyalty to the universal Church and a social order based on religious and social hierarchy. These values were in direct conflict with modern ideas about citizenship, loyalty to the nation, and equality before the law. The desire of liberals to encourage the expansion of a market economy and the free circulation of property was being blocked by the enormous wealth controlled by the Church, which could not be pried loose by market forces. Finally, the Church seemed to resist scientific advancements and Enlightenment rationalism, both of which were associated with 19th-century ideas of "progress."

When the Liberals came to power in 1855, they passed laws designed to strip the Church of much of its wealth and power and at the same time free up Church-controlled property for use by an emerging capitalist class.

STOP! Pretend you are a liberal modernizer in 1857 writing a new constitution. What provisions would you establish to limit the power of the Church? List at least three new laws you would pass.

Now continue reading to see what actually happened.

In 1856 and 1857, the Liberals passed a series of laws and wrote a new constitution. Among other things, these new laws abolished the right of priests to be tried in Church courts; created civil marriages and non-Church record-keeping of births and deaths; established a state-run educational system; and required the sale of all Church land not necessary for maintaining the church itself. However, because of the onset of civil war and a period of political chaos during the 1860s and early 1870s, most of these laws were not consistently enforced.

Porfirio Diaz came to power in 1876. During his rule (1976-1910), Mexico experienced political stability and economic development, but at the price of authoritarian dictatorship and increasing class division. In exchange for offering open support of the dictator's policies and its help in preventing protest, the Church regained a position of influence. The Church regained some (though not all) of the economic ground it had lost. Church schools and monasteries again began to flourish.

During the Mexican Revolution of 1910, the tension in Church-state relations that had festered for almost a century came to the forefront again. Throughout the violent fighting of the Revolution (1910-20), Church leaders often sided with the most reactionary political and social elements in the country.

Once again, liberals and modernizers wanted to eliminate the church as a political and economic force. Their opportunity came during the writing of the Mexican Constitution of 1917.

Among many provisions dealing with the relationship of church and state, the constitution of 1917 called for confiscation by the government of all Church property not needed for purposes of religious observance. Outdoor religious services were forbidden. Priests were barred from participating in political activities, and public, non-religious education was firmly established as a responsibility of the government.

It was one thing to pass laws stripping the Church of political and economic power. It was something altogether different to strip it of popular support. For the entire history of Mexico, the Catholic Church had played a central role in the daily lives of the Mexican people. In 1926, when President Calles attempted to enforce the anti-Church measures of the new Constitution, a rebellion began. To protest government measures against the Church, Catholic priests refused to perform mass and other religious ceremonies. Church leaders, backed by ranchers of western and central Mexico who were also opposed to land reform, rallied the support of peasant farmers. Calling themselves *Cristeros* (people for Christs), the rebels resisted both government orders and military attempts to enforce them. As a result, much of the country was again plunged into a bloody civil war that lasted for several years.

STOP! Imagine that you are a devoted Catholic who joins the Cristeros in 1926. What arguments would you give for defending the position of the Church against the government? Give at least three arguments.

Handout M-14

THE HISTORY OF CHURCH/STATE RELATIONS IN MEXICO: RESOLVING THE CONFLICT

Many lives were lost during the Cristero rebellion, and acts of revenge were savage on both sides. The federal forces saw the rebellion as insurrection, an attempt to overthrow the newly legitimate and constitutional government of Mexico. Catholic priests saw the rebellion as an effort to save the Holy Church from wholesale destruction. Eventually, the government succeeded in putting down the armed rebellion by the *Cristeros*, but a real truce between the Church and the central government was only achieved after a series of negotiations between government representatives and leaders of the Church. Dwight D. Morrow, U.S. Ambassador to Mexico, played an important mediating role in these discussions. Respected by the Mexicans for his ability to speak Spanish and his in-depth knowledge of Mexican culture, Morrow was able to take the role of a neutral party who had established personal ties and credibility on both sides of the dispute.

The compromise reached between the Church and the Mexican government was never formalized in writing, but it has been maintained fairly successfully to the present. It was agreed that priests would register with the government; religious instruction would not be offered in public schools, but could take place within the confines of the Church; and the government would recognize the integrity of the Church. Churches resumed performing religious services.

Although the specific terms of the 1917 Constitution were never amended, over the years the government has chosen to look the other way at many Church practices that technically are prohibited. Today, religious processions are often held out of doors. Religious instruction and observance remain prohibited in public schools, but there are many Catholic schools and a Catholic University. Many people who can afford to do so send their children to private or parochial (church-run) schools rather than to the underfunded public schools.

While the economic and political force of the Church is a shadow of what it was before 1910, the government and Catholic Church are on friendly terms. Other religious sects, particularly evangelical Christians, are growing in importance. Estimations are that between 25 and 30 percent of Mexicans now belong to Evangelical churches, a fact that many see as extremely threatening to the Catholic Church. Nonetheless, the Catholic Church continues to occupy a leadership role in Mexican religious life, and plays an important part in Mexican culture.

Role Card: Politician Opposed to Granting New Rights to Churches

Your role is to defend the provisions of the constitution of 1917. You believe in freedom of religion, but you also believe strongly in the separation of church and state. Historically, the Catholic Church had too much power in Mexico, and that power and influence was not used to benefit the Mexican people as a whole. Religion's moral authority already makes it easy to sway people's opinions. If churches are allowed to accumulate material wealth and take part in politics, they could again develop enormous power like the Catholic Church did prior to the 1910 Revolution. Furthermore, with the rise of Evangelical churches in Mexico, you do not want to see the political arena become a battle ground for differences in religious belief. The government needs to be free of religious control. In your opinion, none of the provisions of the 1917 Constitution should be changed.

Study the provisions of the Constitution regulating the Church and be prepared to defend them as in the best interests of Mexico and the Mexican people. Prepare arguments for why each of the provisions should be kept in the Constitution.

Role Card: Priest in Favor of Granting More Rights to Churches

Your role is to regain as many rights for religious institutions as possible. In your opinion, the 1917 Constitution was misguided to begin with and today is horribly out-of-date and harmful to Mexico. Mexico remains a predominantly Catholic country and the Mexican people are very religious. As someone who is involved in religion on an everyday basis, you recognize that churches provide irreplaceable services to the Mexican people in their everyday lives and are the backbone of the Mexican community. Any material wealth accumulated by churches is used to care for the spiritual well-being of the people and to run hospitals, orphanages, schools, and other essential services not being adequately provided by the government. Furthermore, to prohibit clergy from participating in politics is to deny them basic human rights. You believe that in a country so thoroughly Christian as Mexico, government should reflect religious values.

Study the provisions of the Constitution regulating religion and the church and be prepared to attack them as contrary to the best interests of Mexico and the Mexican people. Prepare arguments for why each of the provisions should be discarded.

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Role Card: Mediator

Your job as an outsider and neutral person is to help the opposing parties come to an acceptable agreement. You really do not care what the specific solution is, but you do want the parties to resolve their differences so that Mexico is not caught in the middle of a new political conflict.

Become familiar with the provisions of the Constitution and with the arguments, feelings, and concerns of each of the sides to the conflict. Their positions are reproduced for you to study. Prepare questions and strategies that might help you negotiate the dispute. Follow these procedures during the meeting:

1. Allow each side to present its case. Ask questions to insure that you understand their position and arguments.

2. Ask each side what it needs to resolve the dispute.

3. Make proposals, look for mutual interests, promote compromises. If you can't get the parties to agree on everything, get them to agree on as much as possible.

4. Prepare to announce the agreements that have been reached.

Mediator Information

Positions of the Parties to the Debate:

The politician opposed to new rights to churches believes in freedom of religion, but also believes strongly in the separation of church and state. Historically, the Catholic Church had too much power in Mexico, and that power and influence was not used to benefit the Mexican people as a whole. Religion's moral authority already makes it easy to sway people's opinions. If churches are allowed to accumulate material wealth and take part in politics, they could again develop enormous power like the Catholic Church did prior to the 1910 Revolution. Furthermore, with the rise of Evangelical churches in Mexico, this politician does not want to see the political arena become a battle ground for differences in religious belief. The government needs to be free of religious control. In the opinion of this politician, none of the provisions of the 1917 Constitution should be changed.

The priest in favor of more rights for churches believes the 1917 Constitution is out-of-date and harmful to Mexico. Mexico today remains a predominantly Catholic country and the Mexican people are very religious. As someone who is involved in religion on an everyday basis, this priest believes that churches provide irreplaceable services to the Mexican people in their every day lives and are the backbone of the Mexican community. Any material wealth accumulated by churches is used to care for the spiritual well-being of the people and to run hospitals, orphanages, schools, and other essential services not being adequately provided by the government. Furthermore, to prohibit clergy from participating in politics is to deny them basic human rights. This priest believes that in a country so thoroughly Christian as Mexico, government should reflect religious values.

Handout M-15

PROVISIONS OF THE CONSTITUTION RELATED TO RELIGION

The following provisions of the Mexican Constitution of 1917 regulating church-state relations and religious activities will be under consideration:

ARTICLE 3: Establishes the right to a free education that is entirely separate and free of religious doctrine.

ARTICLE 13: Outlaws trials by private courts or special tribunals; everyone must be tried in the same court system.

ARTICLE 24: Establishes the right of freedom of religious choice, and the right to practice all ceremonies, devotions or observances provided they do not affect any laws.

ARTICLE 27: Deals with issues of landownership. Among other provisions, prohibits churches from owning property except the buildings in which they conduct services; all other church-owned real estate to be confiscated by the national government.

ARTICLE 28: Deals with monopolies or restrictions on free competition. Restricts the performance of religious services to inside churches.

ARTICLE 130: Deals specifically with government regulation of and relationship to religious groups.

Establishes marriage as a civil contract; a strictly religious ceremony does not establish a legal marriage.

Bans the formation of political parties by religious groups.

Prohibits clerics (priests/ministers) from criticizing the government, voting or running for political office.

Prohibits clerics from inheriting property.

Denies ministers the right to trial by jury in any of the above matters.

6 VICTIM OR VILLAIN? LAND REFORM IN MEXICO

Introduction: This lesson asks students to consider conflicts that Mexicans have experienced over the issue of land reform. After reading a brief history of farming practice in Mexico, students are asked to look at the issue of justice in distribution of land from the perspectives of a hacienda owner and a campesino.

Objectives: Students will be able to:

1. Explain some of the problems related to land reform in Mexico.
2. Analyze the land reform issue from the perspective of a hacienda owner and a campesino.

Materials: Copies of Handouts M-16 and M-17

Time Required: 1 class period

Procedure:

1. Write the following words on the board and provide pronunciations and brief definitions:
    - campesino (Kahm-pay-SEE-no) A rural farmer, farm worker, or peasant. Before the revolution, most were landless. Today, many have land as a result of the revolution.
    - hacienda (ay-see-EN-da) A pre-Revolutionary large farm, plantation, or land-holding owned by the Mexican rich (although some were also owned by foreign individuals and corporations). New laws that resulted from the Revolution were supposed to outlaw haciendas, but new forms of extensive land-holding and farming have arisen.
    - ejido (ay-HEE-do) Usually, a farm operated by a group of families or a community. Some are farmed collectively and others are divided into small plots for individual families to use. Some ejidos are forest or pasture lands. All ejidos are owned by the state and are granted to campesinos for their use. Once granted, they are supposed to be inalienable for as long as they are used.

2. Explain that students will be reading a short history of land reform in Mexico. Review some of the following points:
    - About one-third of Mexicans live in rural areas. The PRI count on this group of people for about half the votes in national elections.
    - About 10 to 20 percent of all Mexicans are Indians (identified by race, language, culture, point of origin, and belonging to a community). Most Indians are campesinos, but many have moved to urban areas, due to their inability to make a living as campesinos. Many also have migrated to the United States in search of work.

Adapted from the field test version of *The Mexican Challenge*, American Forum for Global Perspectives in Education. Used with permission.

- About 12 percent of Mexico's land is suitable for cultivation. Much of the land requires irrigation. About 45 percent of the arable land is ejidal (see above). Other types of legal land-holding include communal lands (generally non-agricultural or pasture lands owned by a community), "small properties" (up to 100 hectares of irrigated or 200 hectares of non-irrigated land) privately owned by individuals, and large farms of more than 200 hectares, which have been "protected" from redistribution due to their economic value and the profits the owners are able to make.
- Only about 16 percent of all Mexican farms are large, but these account for over half the arable land and half the irrigated land in production. In other words, a small minority of rich people continue to control most of the agricultural production. Some of these large farms are organized for agribusiness (large-scale production for export) by extended families, who circumvent the laws that limit land-holding by registering adjacent tracts in the names of individual family members, thus creating extensive farms of thousands of hectares.
- Crops traditionally grown by Indians and other campesinos are beans, corn, squash, and chile. Beans and corn together make a complete food that is high in protein and has all essential amino acids necessary for total nutrition. But campesinos are turning away from these crops because the prices that the government pays for them are too low to make a living growing them. Also, the government banks will not extend credit to farmers who want to grow traditional crops. Instead, the government wants farmers to grow crops that can earn foreign exchange through export. So traditional crops are being replaced by such export crops as coffee, cacao, sugar cane, and fruits and vegetables. These crops, however, are not sufficient for total nutrition, and the profits they bring the farmers are not high enough to make a living in small-scale production. Only large-scale growers accumulate wealth.
- Campesinos end up buying their food from grocery stores instead of growing it for themselves; they often are malnourished because they cannot afford expensive manufactured foodstuffs and those they can buy have low nutritional value. Mexicans today often find themselves eating tortillas made with corn bought by the government from the United States. The government keeps the price of the tortilla lower than the cost of producing it in Mexico (where the average worker makes $3 or less per day) in order to provide the poor (at least one-third of the population) with one affordable staple (and hopefully to prevent another revolution). But this does not help campesinos afford anything more than tortillas. In order to make a decent living, campesinos often turn to illegal cash crops, like opium, poppies, and marijuana for the American drug market. Many of these people eventually find themselves in prison or under military attack by drug-control agents armed and directed by the United States.

3. Have students read Handout M-16. Discuss the answers to the questions as a group. Ask students why they think land reform is still a controversial issue in Mexico today. Which side of the debate do they think is correct? What would happen if the government tried to eliminate the ejido in favor of larger corporate farms? How does inefficient farming hurt Mexico?

4. Distribute Handout M-17. Assign half the class to write paragraphs from the viewpoint of Hernando the hacienda owner, and the other half to write from the perspective of Carlos the campesino. Have students read their paragraphs aloud. Why might the wealthy feel like victims? Why might the campesinos consider them to be villains? How were the methods of taking land similar and different?

5. Revisit the current issue of land reform and productivity. How can Mexico provide justice for both peasants and the people of Mexico who want food at low prices? How does the issue of land reform in Mexico impact the United States? (Increased immigration pressures, less expensive vegetables, desire for political stability.)

LAND REFORM IN MEXICO

When Mexico won its independence from Spain in 1821, many campesinos thought life would get better. Many things did change. But life for the majority of Mexico's people remained much the same—as poor as ever. The few families who had grown rich during colonial days continued to control the wealth. The century after the war was filled with wars, rebellions, and dictators. It was a time of hardship for most Mexicans.

The wealthy landowners lived on huge estates called haciendas. Most peasants worked on haciendas. Sometimes they received a small share of the crops. Sometimes they had a small plot on which to grow food. They seldom received wages. They did not have an opportunity to go to school. Their hard work only helped make the landowners richer.

Porfirio Diaz came to power in 1876. Things grew even worse for the peasants. He passed a law that said everybody must prove ownership of the land or it would be taken away. The wealthy landowners had deeds to their land. Most campesinos had no deeds or titles. The land had been passed down to them from their family according to Indian traditions. The new law meant that their land could be seized.

Land Reform and the Revolution (1910-1920)

In 1910, 2 percent of the Mexican people owned 97 percent of the land. While most people lived in rural areas, they had no land at all. In 1911, Diaz was overthrown. Over a million peasants died during this revolution fighting for land.

By the 1930s, little had changed. The promises made to the campesinos who had fought in the Revolution had not been delivered. The campesinos were threatening to rebel again if their demands continued to be unmet.

In 1934, Lázaro Cárdenas was elected president of Mexico. He made sweeping reforms. He began to dissolve the haciendas and redistribute the lands among the campesinos.

Ejidos were granted to groups of families or communities, many of whom were Indians. On some ejidos, all members shared the work of the entire farm and divided the profits. On others, the land was divided into small plots for each family. All ejidos are officially owned by the state. The system is similar to that used by Indians before Spanish rule: land was held as a common resource that could be used but not owned by individuals.

By the end of Cárdenas' term in 1940, 42 percent of the campesinos had some land, although few had enough to make farming profitable. Cárdenas suceeded in making powerful enemies, including haciendados whose lands had been confiscated and certain political elements who blamed Cárdenas for a decline in agricultural production.

During the 1950s, distribution of land came to a nearly complete halt. Many large land-holders were "protected" from confiscation, while others began to take land back illegally from the ejidos. Irrigation canals were contructed mostly for the wealthy. Because the government wanted to industrialize the country and modernize agriculture, it gave support to large farms that could produce food for export. In the 1970s, Mexico announced that it had run out of land for peasants.

Land Reform Today

Mexicans continue to debate whether land reform was ever a good idea. With the same quality of land and the same proportion of input per unit of land, a campesino can produce as much as or more than a large-scale mechanized farm. However, there is simply not enough land to distribute among campesinos. Most ejidos and small property owners operate on amounts of land that are too small even to support a family, let alone enough to bring crops to market for profitable exchange. Most ejidal lands are of inferior quality and are completely dependent on rainfall, as they have not been granted irrigation.

The demand for lands long-promised to campesinos goes unmet. Thousands of claims for ejidos are bogged down in bureaucratic inertia. Those who do have ejidal lands find it difficult to get government bank credits for agricultural inputs or machinery. They are also denied credits to grow any crop that the government does not want to market, meaning that the government will not support campesinos' self-sufficiency. Some critics have claimed that the ejido is merely a government farm on which low-paid campesinos work.

Meanwhile, Mexico has concentrated its resources in assistance for those who need it least—the large-scale producers of export crops like strawberries, tomatoes, and watermelons grown mostly for U.S. markets. Most of these farms are in the north, and many of them are organized by and for international agribusiness. These farms dominate the best soils and have the largest share of government-supported irrigation water. They are "protected" by the government from redistribution of their lands, and they oppose any further creation of ejidos. Instead, they support the reversal of the agrarian reform. They often claim that the land reform was an exercise of welfare socialism that failed due to the inefficiencies of small-scale production and the lack of incentives for capitalist production methods.

Campesinos and some Mexican socialists continue to claim that the historic right to land has been established and repeatedly emphasized as the legacy of the Revolution. They say that the government has an obligation to satisfy campesino demands for land. Many campesinos stay on ejidal land for fear that they will lose it and the rights that go with it if they do not work it. They do this even though they cannot make the land pay. Their ability to continue to live this way is jeopardized in many ways, including having malnourished and unhealthy children who may never be able to read and write.

Comprehension Questions:

1. How was land in Mexico farmed after the Spanish conquest? after independence?
2. How did President Diaz take land from the campesino?
3. What is an ejido? How is it different from a hacienda?
4. What arguments do Mexican people make for and against the ejido?

VICTIM OR VILLAIN?

Carlos the Campesino

Imagine you are a campesino in the countryside in the late 19th century. Life is hard for you and your family. By sunrise you and your sons are already hard at work in the fields. You work until sundown, with a short break during the heat of the day. Your wife and daughters also work from before sunup to sundown. They grind corn, make tortillas, sew, clean, and tend the garden. Work never seems to end. Yet sometimes you still go hungry. Now you hear there is a new law. Anyone who does not have a deed or title to their land will have their land taken away. Finish the following paragraph by describing how you feel.

Yesterday a government man came to our village. He said that if we didn't have our deeds by the time he returned in two weeks, our land would be taken away. What am I to do? None of the families in the village have deeds. Our land is ours. It has always been ours. It belonged to our fathers before us, and our fathers' fathers before them. It has been in our families for generations. No one ever needed to prove it with a deed!

Hernando the Haciendo Owner

Imagine that you are a wealthy landowner in Mexico before the revolution. Then comes the revolution and later the land reform. The government tells you that they are going to give you some money and take away your land. The land is much more valuable than the amount of money the government is going to give you. Do you think this is fair? Finish the following paragraph by describing how you feel.

Yesterday, a government man came to take away my land. He said the government would pay me for it. But his price was a joke. He said that the Revolution is going to bring many changes. He said the days of my hacienda are over. Imagine, he is going to give my land away. I have worked hard to buy this land so that my sons and my sons' sons can enjoy a better life.

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LIVING LAW VS. WRITTEN LAW: CONFLICT RESOLUTION IN RURAL MEXICO

Introduction: Mexican Indians officially have the same rights as everyone else. However, many of their traditional ideas about law and justice survive in spite of official efforts to impose governmental systems on their communities. This lesson introduces students to some of the legal, social, and economic problems of Indians in rural Oaxaca and to dispute resolution techniques that are used by the Chatino Indians today.

Objectives: At the end of this lesson, students will be able to:

1. Describe methods of dispute resolution practiced in rural Mexico.
2. Explain why law as it is applied in the community is different from the law as it is written.

Time: 1 class period

Materials: Copies of Handouts M-18 and M-19 for all students.

Procedure:

1. Familiarize students with the history and culture of Chatino villages using Handout M-18. Emphasize the fact that the Indians are living in two cultures—that of the local village and that of their nation of Mexico. Review the methods of dispute resolution available to the Indians and discuss which ones seem most appropriate to the needs of the people.

2. Tell students that they will be getting an overview of four disputes that have arisen in Oaxaca within the past few years. Provide Handout M-19 and ask students to read each of the cases and develop tentative responses. Ask them to use information about the culture to determine why problems have occurred and how they might be solved.

3. Form groups of three to five students. Each group should discuss one of the cases for presentation to the class.

4. Discuss each case, starting with students' ideas about how the case will be resolved and then presenting the resolution that actually occurred (see **Teacher Background Information**). How do economics and social pressure affect level of violence? How do outside forces create factionalism and blood feuds?

5. Tell students that many migrant workers in U.S. agriculture come from this area of Mexico. Ask students to develop some hypotheses about the following questions:
   - What experiences or perceptions of the law in Mexico might create problems or misunderstandings for Mexican Indians who come to the United States?

Based on "An Ethnography of Law and Violence in Rural Oaxaca, Mexico," by James B. Greenberg, *Arizona Journal of International and Comparative Law*, 1988.

- Which of the dispute resolution techniques might cause problems for Mexican nationals in the United States?

6. Ask students to consider the following case study. Does it support their hypotheses? How does what they have learned about Indians and the Mexican legal tradition help explain the case? Read the case aloud and discuss these questions.

> Is slavery still possible in the United States? In 1990, a landowner in southern California was charged with slavery. The petition filed in federal court said that the workers were "peasants from some of Mexico's poorest areas." According to a lawyer working for the California Rural Legal Assistance program, many of the workers were Zapotec Indians from Oaxaca, Mexico.
>
> The charges came about as the result of an extensive investigation that provided evidence supporting the claims of workers who escaped from the ranch. (Escape was difficult, since the ranch was surrounded by a barb-wired-topped seven-foot plexiglass and chain-link fence with a double padlocked gate; the entire fence was encircled by a moat.) The charges made by the workers included the following:
>
> - Workers sometimes worked up to 16 hours a day six days a week for $1 an hour. They were not allowed to drink water or go to the bathroom while working.
> - Workers were forced to live in filthy conditions, for which they were charged as much as $80 a month rent.
> - Workers were punished by being locked up, punched, slapped, or pinched. The rancher threatened to turn workers over to immigration officials if they tried to leave.
> - Workers were forced to have their heads shaved. They were charged for these "hair cuts."
> - Workers had to buy their supplies and tools from the rancher at very high prices. These supplies included blankets, sheets, a pillow, toilet paper, and food. The charges for these supplies were deducted from the workers' earnings.
> - A fee for smuggling undocumented farm workers into the United States was deducted from their wages. A worker could not leave the ranch until he had earned $435 to pay the smuggler.

Following the discussion, you may wish to tell students that the landowner eventually pled guilty to charges of racketeering; the charges of slavery were dropped. The rancher was forced to pay about $1.5 million in back pay to 300 farm workers.

7. End the lesson by having students discuss the problems or misunderstanding U.S. citizens might experience while visiting or living in a Chatino village.

Teacher Background Information:

The following information will be useful in discussing the resolutions to the conflicts described on Handout M-19.

Case 1: While several family members wanted to attack the priest directly, Fortino decided to approach the problem through political patronage. Working behind the scenes, he found political friends who could act as intermediaries. They approached the archbishop on his behalf and requested that the church pressure the priest to leave the family alone. It was agreed that if anything happened to Fortino's son, the priest would be held responsible. A year after the archbishop intervened, Luis and Maria returned to the village.

Case 2: This was a public murder witnessed by many people. The villagers surrounded the son, preventing retaliation and allowing the man who had stabbed Jose to escape. In the villagers' way of thinking, the murder was justified. Not only was the victim a mestizo from a village with which they had had conflict, he had also endangered their lives. A warrant was issued by the district court for his arrest, but no attempt was made to arrest him.

Case 3: The next day the judge summoned the relatives from both factions to court because he was concerned that this conflict was getting out of hand. While a certain level of violence is tolerated, the principals in this conflict were leaders of rival political parties. The incident could easily escalate into a dangerous confontation. He decided not to apply the letter of the law. He explained that charges would not be filed against members of either family if they would promise no further violence. He warned that if there was violence, both parties would go to jail for five years.

Case 4: Emiliano gave a full report to the town. He explained that the town of Juquila had paid a $2,000 bribe to the director of the Office of Communal Lands in 1970 to get a presidental resolution of the boundary disputes. Emiliano argued that they needed to pay a bribe to give force to their petition. The villagers each contributed money, showing that there was consensus regarding this decision to try to regain the title to the land in dispute.

Emiliano and an advocate from the peasants council went to the meeting, but representatives from the other town did not show up. The case was turned over to a special unit for a decision. The officials also advised the village to invade the plantation and come back if there were any problems with the local public prosecuter.

The village had a heated argument over how to proceed. The leader and secretary opposed invading the plantation since written permission had not been given. Others thought those opposing an invasion were traitors to the village and friends to the plantation people.

The decision was made to put the question into God's hands. By bringing the priest from Juquila to say special masses, the people were showing a "no confidence" vote in their leader and secretary. They bypassed the authority figure in favor of a decision by consensus. The mass was well attended and the collection very large—evidence of widespread support for the decision to invade.

Emiliano presented his case to the elders and all the men of the village. The village voted to remove the leader and invade the plantation the following morning. "Our patron saint Santiago will give us his sword." They cut fences and started to clear fields for corn planting. When one of the "owners" appeared, he was gunned down. A panic followed, and Emiliano and his committee set off to report what was happening to the Communial Lands Office.

Emiliano was accused of the "assassination," but charges were never proven. Emiliano continued the fight by organizing a second invasion of the plantation after he secured written permission from the Communal Lands Office, but his authority had been compromised. The plantation "owners" secured an injunction and called in state police, who opened fire on villagers. Several were wounded and others arrested. The village was once again divided into factions.

CHATINO VILLAGES AND DISPUTE RESOLUTION: LIVING LAW CASES FROM RURAL OAXACA

Living Law vs. Written Law

Struggles over land remain common throughout Mexico. Nowhere are these struggles more evident than in geographic areas where Indian communities have lived for many years. Although Indians have not shared all the cultural values that underlie the state institutions of land distribution and political organization, they have adapted to those institutions in order to survive. Demands for *ejidal* (communal) lands continue to be high. The lands already distributed are often insufficient for the community.

Indians (and other *campesinos*, as well) often find themselves in violent conflict over the land and other resources. Sometimes, Indians invade lands held by large land-holders; other times, communal lands are invaded by large land-holders. Indians usually come up short in such struggles, because local political, administrative, and judicial structures are controlled by landowners' allies.

While the historic right to land is clearly at stake in these struggles, other important questions of human rights also are involved. Amnesty International has found disproportionate populations of Indians imprisoned in southern Mexico. Many of them have been jailed in violation of common standards of justice. In addition, there are reports of torture and assassination by paramilitary "death squads" who work in behalf of large land-holders. The Mexican government denies or trivializes these reports.

Villages, neighborhoods, and families can be set against one another by the manipulation of favors and punishment. Large land-holders and their government accomplices at all levels commonly use divide-and-rule strategies. Rarely does conflict develop between the true antagonists. Rather, the dominant class or culture usually sets various elements of the subordinate class or culture at war with one another. Where rural violence is encountered, one must look behind the scenes to find exactly who benefits from conflict in the long term.

Background Information

Juquila and its neighboring villages are located in the state of Oaxaca. Bitter battles over coffee plantation lands have plagued the community since the 1930s. Much of the conflict described in the cases is centered on disputes over La Constancia, a coffee plantation that was leased from the village of Yaitepec by a priest at the turn of the century. The priest's sons claimed title to the leased land.

The community has not been successful in petitioning for the return of the land. The plantation owners have formed an alliance with some members of the community, contributing to conflicts that have escalated into a series of homicides. Homicide rates in Juquila are among the highest in all of Mexico—five times the national average.

The introduction of coffee as a cash crop was the beginning of many problems. Fights over the land erupted because people wanted to get the cash from planting the crop on the communal lands. As the price of coffee went up, greed and ambition divided the people. People began to grab land, fence it, and exclude others.

The presence of outsiders has also contributed to the problem. People whose families have lived in the community for years are denied lots, while rich outsiders who have money grab them.

What Dispute Resolution Options Are Available in Oaxaca?

Government Institutions and Processes

1. Call the Police. People in Chatino communities rarely call upon the police to make arrests, partially because police are not respected. Police officers are unlikely to initiate contact because to get involved would be seen as taking sides. Effort is made to apprehend criminals when upper class citizens are involved.

The police force in many Indian communities is comprised of young, unarmed boys, 13 to 18 years of age, who run errands for civil servants.

Army troops can be called in when violence is widespread.

2. File a Claim in Court. State-operated courts are available at the village, district, and supreme court level, but they are expensive to use. Fees must be paid for filing papers, and bribes may be needed to insure a postive outcome.

In the civil court system, the judge actively questions witnesses, defendants, and plaintiffs. Formal procedure must be followed. Penalties—fines and jail sentences—are likely to be far more severe than if decided by traditional means. Indians do not believe that the court views them as equal to mestizos, who are more closely connected to the system through social and family connections.

3. Petition the Government. Mexico has a large bureaucracy. Many agencies are assigned to economic and social development.

Traditional Methods

4. Gossip. People fear the repercussions of being the object of gossip and will go to great lengths to avoid it.

5. Use Patronage. Political bosses can provide access to political power. The more serious a conflict, the more likely patronage, or assistance from a powerful person, will be needed.

6. Agree to Mediation. Family or friends often act as go-betweens in a dispute. The most effective mediation occurs when the mediators are related to the disputants. Town officials can also serve as mediators when complaints are made. Disputants are often encouraged to share a bottle of Mescal (a strong liquor) and encouraged to speak from the heart. Lies will be met with laughs or jeers. The goal is to soothe parties and ask them to give up grudges.

7. Take Direct Action. When communal lands are threatened, every possible means is considered honorable and justifiable. This may include violence or mass demonstrations.

8. Pray. People often call upon their patron saints for help in time of crisis.

LIVING LAW CASES FROM RURAL OAXACA

Case 1—The Highway Ambush

Luis and his wife Maria were ambushed while returning home from a neighboring village. The car was riddled with bullets, but the young couple escaped with minor injuries. Luis and Maria fled to the capitol city of Oaxaca, leaving Luis' father, Don Fortino, to investigate the incident. Fortino is a local leader of Mexico's most powerful political party.

Fortino thought that the ambush was probably related to an earlier event. His son had recently killed another villager during a dispute. No charges were filed by the local prosecuter due to insufficient evidence. Conversations overheard by his daughter led Fortino to conclude that a local priest and his mistress were responsible for the attempted murder. The priest, a leader of a competing political party, also had the support of the communal land organization and Indians in surrounding villages.

- What criminal and civil charges might be made?
- Considering the community, what method of dispute resolution should be applied?

Case 2—A Public Murder

Fortino's half-brother, Jose, and nephew, Manuel, came to Yaitepec from a neighboring village to buy hides and attend the fiesta for the village's patron saint—Santiago. The horse races were a favorite activity at the fiesta. Jose was a little drunk when the horse races began, but he bought a bottle of Mescal and continued to drink. Manuel tried to get his father to leave; Jose put him off, saying "As soon as I finish this drink." Before long, Jose was "roaring" drunk. He pulled a gun from his jacket and fired shots in the air. A local villager standing behind Jose pulled a knife and stabbed him in the back. The blade pierced his lung and he died on the spot. Manuel pulled his knife in retaliation.

- What civil and criminal charges could be brought?
- What method of dispute resolution should be applied?

Case 3—A Blood Feud

Manuel was grief-stricken following the murder of his father. While a likeable person when sober, Manuel was known to be nasty and dangerous when drunk. Two months after his father's death, he went into a deep depression. One day while drinking at the local store, his godmother berated him for not avenging the death of his father. "You're a drunken fool. The man who killed your father is walking free."

Manuel reacted violently. He slashed the woman with his machete, cutting her arms and scalp. Many villagers heard the scream and watched him escape with the machete still in his hand. A crowd gathered, and an army nurse was called to attend the wounded woman. In the crowd there was a great deal of support from members of the opposition political party for lynching Manuel. One person said "Manuel's brother killed my wife and escaped without punishment. This idiot does not deserve to live."

Even Manuel's family was unwilling to defend him. "If they catch him, he has it coming." When Manuel tried to sneak back into town, his enemies fired shots at him. The state police observed the gun fire but did not react. Manuel managed to escape again.

- What civil or criminal problems do you see in this case?
- How should the dispute be resolved?

Case 4—Juquila and Yaitepec Villages Try to Settle a Land Dispute of 60 Years

Authorities in Juquila signed a 25-year lease with a lumber company Etla, giving Etla the right to cut timber on a tract of land north of Yaitepec. Authorities in Yaitepec were very disturbed to learn about this, since they believed the tract in question was their land. They threatened violence if any trees were cut.

Yaitepec officials arranged a meeting with a representative of the Etla lumber company. Emiliano, head of the communal lands committee, took an 1862 map with him to document the mountain tops and river alignments that formed the boundary of the tract. The Etla representative noted that the map had no notary marks and pointed out that the map would be worthless in court. Hoping to aviod violence, he agreed to postpone cutting so that the villagers could take the dispute to the National Indian Institute.

The villagers knew that the National Indian Institute was a *mestizo*-dominated government agency, but they decided to give it a try. The center's director looked at the map and found it to be worthless. Their map was a copy of a 1926 document that had been altered to conform to their claim. Emiliano explained that the original had been stolen by "owners" of the plantation with help from a former leader of the community.

The Indian Institute referred the claim to their superiors in Mexico City. Their decision was not good news for Emiliano and the village of Yaitepec. The agency's ruling favored the Juquila claim, but the authorities suggested that Yaitepec might win their claim for the plantation land.

The Yaitepec then sought help from the National Confederation of Peasants since the villagers faced a bureaucratic maze in the government offices. Officials had little time for the Indians. After two weeks of filling out forms and petitions, they were told that the Office of Communal Lands did not support their claim over the dispute with Juquila. A meeting would be scheduled within the month to see if the communities could work it out themselves. The director took Emiliano aside and told him, "I'll see what I can do if you make it worth my while."

- What civil and criminal charges could be brought?
- What methods of dispute resolution should be used?

8

POLITICAL EDUCATION THROUGH ART

Introduction: Murals are a Mexican tradition that dates back many centuries and continues today, providing a form of individual and community expression. Mexican muralists played an important role in communicating the goals and rationale for the Mexican Revolution to the people. Murals were used to help the people break with the colonial past and develop the attitudes and skills necessary for realizing the goals of the revolution. This lesson features several of Diego Rivera's murals as civics lessons for the people.

Objectives: Students will be able to:

1. Explain why murals are an important art form in Mexico.
2. Analyze paintings for political messages.
3. Classify murals according to their messages (political, personal, or historical messages).

Materials: Copies of Handout M-20 for all students; slides, prints, or artbooks showing the works of Diego Rivera or other muralists (see suggested sources listed at the end of the lesson.

Time Required: 1 class period

Procedure:

1. Have students brainstorm all the "public art" that they can think of in their community. How does the presence of that art affect them? How does the art change the way members of the community behave? Does it convey a message to visitors about the community? The Viet Nam memorial might be used as an example of a national monument that evokes a great deal of response from the public. If possible, show slides or pictures of works students can relate to.

2. Explain to students that public art has been an important part of the daily lives of Mexican people throughout the country's long history. Paintings are found in caves throughout Mexico, and cathedrals are filled with religious art; archaeological landmarks are visited frequently.

3. Provide some examples illustrating public art from ancient Mexico and colonial Mexico. Examples from the Aztec and Mayan cultures (e.g., masks and fertility figures) might be used to discuss art as a means for agrarian society to communicate with their gods. Colonial examples might be selected to illustrate how the church used realistic portrayals of the deaths of martyrs to present Christianity to the Indians in a forceful way.

4. Provide students with slides, prints, or art books illustrating Mexican murals of the early 20th century. Discuss the participation of artists in communicating the ideas of the Mexican Revolution to the people during the 1920s and 1930s. Explain that murals emerged as part of an "open air school" in which young artists were encouraged to develop a distinctive individual style. The Mexican leaders wanted to use art to translate their views in terms that were understandable to the people. The movement is called Muralismo.

5. Ask students to analyze two or three paintings of their choice using the "painting watching" technique outlined on Handout M-20. Encourage students to look for social, personal, historical, and political messages.

6. Have students share their responses to the pictures in pairs and then as a large group. Use the **Teacher Background Information** on the individual murals and on Diego Rivera and his involvement in art and politics in the decades following the Mexican Revolution. Ask some of the following questions to establish an understanding of the political nature of his work:

- What can you tell about the artist's political beliefs from the paintings?
- Why might the Mexican government want artists to develop a new style following the revolution?
- What ideas did the government want the people to adopt?
- Why might murals be an effective way of educating people?

Enrichment:

Mexican artists influenced New Deal muralists, as well as contemporary artists. Empty walls in schools, housing projects, and business districts are often filled with murals in the tradition of the Mexican muralists. Students may wish to investigate murals in their own community. Is the presence of murals an example of Hispanic influence? Were some completed by Hispanic artists? Do they convey political messages? A class could also design a mural to convey a message to the school.

Teacher Background Information:

Diego Rivera (1886-1957) is Mexico's most famous artist—and one of the most outstanding artists of the 20th century. He is known for developing a form of nationalistic art that blends art and politics into a form of educational material or propaganda designed to help the Mexican people reconsider their history following the Mexican Revolution. Mexican art gained worldwide recognition through his work and through the work of other Mexican artists who are part of the Mexican School of Modern Art. With David Alfaro Sigueiros and Jose Clemente Orozco, Rivera founded the Los Tres Grandes School of Muralism and served as an inspiration to modern muralists.

Rivera was a master at conveying humanistic messages using the Mexican Indian as the primary focus of his work. His work told of the enslavement by the Spaniards, the oppression of capitalism, and his appreciation of the revolutionary ideology. In his murals he would juxtapose the past (false politicians and fat capitalists) with the promise of the future (liberated workers and peasants).

Born in Guanajuanto, Mexico, in 1886, Rivera spent his early life in Mexico City, where he studied art. In 1907, he went to Europe on a government stipend; he remained there until 1920, spending most of his time in Paris. During this time, he studied the work of Picasso and Cezanne and developed an interest in communism through contact with Russian artists.

When he returned to Mexico, Rivera was thrown into the exciting whirl of Mexico's reconstruction era. Like other artists, he joined the "open air" artistic movement, completing his first mural in 1922. He then traveled throughout the Yucatan participating in the indigenous Mexican life and customs. He attended fiestas, sketching native dances and rites.

Diego's murals are associated with the modern art movement. The school brought recognition to Mexican artists and publicized Mexico's goals for the nation.

Suggested Sources:

Schmeckebier, Laurence E., *Modern Mexican Art* (Westport, CT: Greenwood Press, 1971). This source, originally published by the University of Minnesota in 1931, contains outstanding photographs and color plates illustrting Rivera's political ideas, discussions of Mexico's influence on the Modern Art movement, and analysis of individual murals. Suggested works for students include:

Land of the Dollar: This mural features U.S. capitalists John Rockefeller, J.P. Morgan, and Henry Ford sitting at a table with champagne, the Statue of Liberty, and ticker tape. A large safe and radio loudspeakers are in the background.

The Bourgeois Family: A fat, affluent family sits down to a dinner of precious metal while soldiers-peasants look on above. "Gold is worth nothing if there is no food" is on the banner above the mural.

The New Order: People of every class are gathered around a table to share in the breaking of the bread. A fruit-bearer is in the background. Rivera includes a self-portrait.

Descent into the Mine: Simply drawn, silent figures file into the heavy opening of a mine. Depiction of typical and representative scenes of the life of a Mexican worker.

The New School: Seated peasants surround their teacher. In the background, a soldier of the revolution stands near peasants plowing fields while workers build houses. Like many others, this work represents the political ideals for which the government is striving.

Sacrifice and Conquest of Mexico: This fresco is part of the story of Mexican history that is painted on three sides of a second-story balcony at the 16th Century Palace of Cortés. Fighting Indians are on one side of the door and Spaniards in armor on the other. An Aztec sacrificial alter is over the door. Dwight Morrow, American Ambassador to Mexico, commissioned Rivera to decorate the loggia of the 16th Century Palace of Cortés.

Conversion of the Indians, The Inquisition and Zapata: This is the final section of the mural at the Palace of Cortés. Rivera has chosen to display the use of slave labor to build churches and the inquisition to show a parallel to Aztec sacrifice. The agrarian revolution and the leadership of Zapata are represented at the lower left.

Barnett, Alan W., *Community Murals: The People's Art* (Cranbury, NJ: Associated University Press, 1984). The focus of this book is ethnic expression related to education, civil rights, and women's issues through murals. Work of Hispanic, Asian, and African-American individuals and groups in cities throughout the United States during the 1970s is presented with photographs and color plates.

Dressher, Tim, *San Francisco Murals: Community Creates its Muse 1914 to 1990* (St. Paul: Pago Press, 1991). Color plates of murals document the influence of Diego Rivera on the New Deal murals found in San Francisco and throughout the United States.

Rodriguez, Antonio, *A History of Mexican Mural Painting* (New York: G.P. Putnam, 1969). Some illustrations are used to provide a longitudinal study of murals as a reflection of Mexican culture.

Wolfe, Bertram, *The Fabulous Life of Diego Rivera* (New York: Stein and Day, 1963). Wolfe presents Rivera and his wife Frieda Kahlo from the perspective of a personal friend and political commentator.

Postcards showing the details from the murals of Rivera, Orozco, and Sigueiros are available from Dover Publications, 31 East 2nd Street, Mineola, NY 11501.

Handout M-20 Page 1 of 1

MURAL WATCHING

Mural Title______________________________ Artist______________________________

1. What do you see in this picture? List and describe political, personal, and historical symbols and images.

2. What is the artist saying? What do you think the picture means? What is its purpose?

3. How do you feel about this picture?

Mural Title______________________________ Artist______________________________

1. What do you see in this picture? List and describe political, personal, and historical symbols and images.

2. What is the artist saying? What do you think the picture means? What is its purpose?

3. How do you feel about this picture?

Mural Title______________________________ Artist______________________________

1. What do you see in this picture? List and describe political, personal, and historical symbols and images.

2. What is the artist saying? What do you think the picture means? What is its purpose?

3. How do you feel about this picture?

Adapted from "Painting Watching" by Molly Murphy, The Literary Connection.

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Meyer, Jean, *The Cristero Rebellion: The Mexican People Between Church and State, 1926-1929* (New York: Cambridge University Press, 1976).

Meyer, Michael C., and William L. Sherman, *The Course of Mexican History*, 3rd ed. (New York, Oxford University Press, 1987).

Miller, Robert Ryal, *Mexico: A History* (Norman, OK: University of Oklahoma Press, 1989).

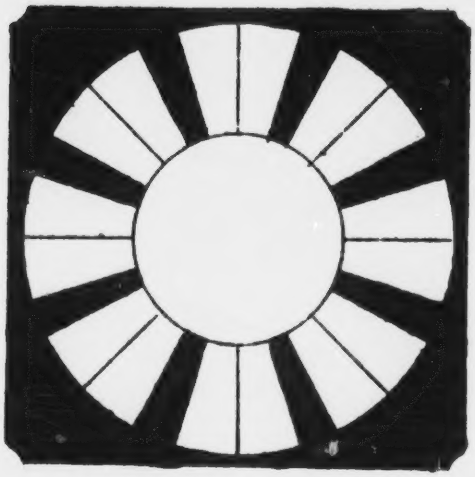
Riding, Alan, *Distant Neighbors: A Portrait of the Mexicans* (New York: Knopf, 1984).

Ruiz, Ramon Eduardo, *Triumph and Tragedy* (New York: W.W. Norton, 1992).

Vanderwood, Paul J., *Disorder and Progress: Bandits, Police and Mexican Development* (Lincoln, NE: University of Nebraska Press, 1981).

JAPAN

by Lynn Parisi



INTRODUCTION

It is generally accepted that, for a constitution to work, it must be in accord with the nation's history, tradition, and sociopolitical values. Constitutionalism, or adherence to the constitution, can be measured by the degree to which the document's provisions are transformed into practice, as well as the extent to which the society believes in the document and the political system that has grown up around it. In its two modern constitutions, the Meiji Constitution of 1889 and the Showa or MacArthur Constitution of 1947, Japan offers an intriguing case study in constitutionalism.

The Meiji Constitution showed every promise of succeeding. The Japanese authors of this constitution, after studying a variety of European and American models in the 1880s, ultimately produced a written description of government which, while Western in style, embodied essential elements of Japanese political and social tradition and of the Japanese people's sense of nationhood. The most notable elements included authoritarianism, militarism, unquestioned obedience to the emperor, and supremacy of the state over the individual—elements that reflect a strong continuity with Japan's past.

In contrast to the Meiji Constitution, the Showa or MacArthur Constitution of 1947 was alien to Japan, in both form and content. Rather than integrating and responding to national history, traditions, and values, the 1947 document represented a conscious and radical break with the past. Largely dictated by the staff of the American Occupation forces, the document responded to American goals and ideals, namely to eliminate the foundation of authoritarianism and militarism that had made Japan's role in World War II possible and to provide in its stead a basis for a democratic government founded on the doctrine of popular sovereignty.

Given the benchmarks of a viable constitution, the 1947 Constitution should not have lasted long past the departure of the Occupation forces. Indeed, in observing the very obvious gap between the new constitution and Japanese tradition and experience, political scientists and other observers widely predicted that the 1947 Constitution and the government it created would slowly but surely be dismantled throughout the 1950s. Instead, the Japanese embraced the 1947 Constitution and made it genuinely their own. According to Professor John Maki (1968), a key to understanding the success of the 1947 Constitution—superimposed and largely foreign-designed—lies in understanding the psyche of the Japanese. In the period following World War II, the Japanese were traumatized by the humiliation of a military defeat. Disillusioned with the government that had led them into a disastrous war, the emperor and the Japanese people rejected the traditional order and sought to distance themselves from their past. Rather than reject the 1947 Constitution as alien, the Japanese responded constructively by using it as a tool for recasting their society.

This unit on constitutionalism in Japan is suitable for upper middle and high school students. The lessons may be integrated in whole or part, in secondary world history, world cultures, world geography, U.S. history, or comparative government classes. The program seeks to provide an historical context for analyzing the Meiji and Showa Constitutions and to help students recognize the importance of culture in shaping both the description and actual practice of government. In comparing the Japanese experience of constitutional government with that of the United States, students should understand that constitutions and the governments they engender differ in form, content, and philosophy, just as the societies that produce and/or execute them differ.

The unit's first three activities focus on traditions and values that have helped shape Japanese government and society. In Lessons 4 and 5, students apply knowledge they have gained about Japanese political and social traditions to assess the system upheld by the Meiji Constitution and to consider which of its characteristics would have conflicted with the goals of the Occupation forces seeking to reform Japanese government and society. Lessons 6 and 7 examine the historical context of the 1947 Constitution. The final three lessons provide a comparison of constitutional rights in postwar Japan and the United States and two case studies of the exercise of individual rights in postwar and contemporary Japan.

1

THE WORLD ACCORDING TO CONFUCIUS

Introduction: Confucianism is a philosophy that entered Japan with the introduction of Chinese civilization around the 7th century, becoming a dominant mode of thought in the early Tokugawa period, around 1600. Confucianism reinforced many indigenous Japanese beliefs while offering a conceptual framework for the ordering of government and society. In this activity, students analyze selected Confucian analects on family, society, and government to gain an understanding of traditional Japanese values and practices.

Objectives: Students will be able to:

1. Describe some values and practices fundamental to Confucianism.

2. Explain how Confucian philosophy contributed to traditional Japanese social and political thought and practice.

3. Apply Confucian teachings to the solution of hypothetical dilemmas in traditional Japanese society.

Materials: Copies of Handouts J-1, J-2 (optional), and J-3

Time Required: 1-2 class periods

Procedure:

1. To open the lesson, ask students what they know about Confucianism. Where did it start? What did Confucius teach? Students may know that Confucianism started in China. They will probably identify Confucianism as a religion.

2. Explain that, while commonly identified as a religion, Confucianism may more accurately be described as a social philosophy. Through his stories, or analects, Confucius taught about rules of conduct which, if followed by families, society, and government, would contribute to a smoothly-functioning world. In this activity, students will consider how Confucian teachings were adopted by Japanese society and government and how these teachings contributed to the value structure and the social organization of the people in traditional Japan.

3. Distribute Handout J-1 to all students and have students read Part A in class or as homework. Discuss the reading in class by having students identify the five social relationships in Confucianism and how they worked. Why was Confucianism easily adopted by the Japanese people as a social philosophy and by the government as a political philosophy? How did Confucianism reinforce existing beliefs and government goals? Was the ideal society Confucius sought to create best described as egalitarian or hierarchical? What attitude towards authority did Confucius try to instill in people?

4. Divide the class into nine groups, assigning each group to read and analyze one of the Confucian analects provided in Part B of Handout J-1. Each group should take responsibility for acting out the story in a way that illustrates the message or guidelines Confucius sought to convey about proper behavior.

5. Ask groups to act out their stories. Debrief each skit by asking the class to identify the Confucian guideline or message about government or social relations illustrated in the story.

As an alternative to the skits, students may complete and discuss the optional worksheet provided in Handout J-2.

6. To conclude the activity, provide students with the four hypothetical situations described in Handout J-3. As a class, consider how people in a Confucian society would respond in each situation.

Handout J-2 Answer Key: 1. Stories I, IX; **2.** If children behave well towards their parents, they will be obedient and respectful of authority in public life; **3.** Stories III, IV, VII, VIII; **4.** The emperor should treat his subjects with dignity and affection, provide a moral example, promote those who are worthy, and use their labor properly; **5.** Story VI; **6.** Stories III, IV, VII, VIII.

References for Part A of Handout J-1:

Hane, Mikiso, *Japan: A Historical Survey* (New York: Charles Scribner's Sons, 1972).

Martin, Roberta, ed., *China: A Teaching Workbook* (New York: Columbia University East Asian Institute, 1983).

McNeill, William H., and Jean W. Sedlar, eds., *Classical China* (New York: Oxford University Press, 1970).

Waley, Arthur, *The Analects of Confucius* (New York: Vintage Book, n.d.).

CONFUCIANISM IN JAPANESE SOCIAL AND POLITICAL THOUGHT

Part A

K'ung-fu-tzu, or Master K'ung—the man who came to be known in the West by the romanized name Confucius—was a Chinese philosopher believed to have lived around 500 B.C. Confucius offered his students rules and guidelines of behavior. Confucius' teachings became so fully integrated into the lives of the Chinese that they became a practical doctrine, designed to preserve a political and social system of order and stability.

According to Confucius, the world of nature follows certain immutable laws. Everything in nature is a piece contributing to an ordered whole. Things in nature cannot exist alone; they exist only as a component of the whole universe, dependent on other things around them. As such, everything in the natural world has a proper place in relationship to everything else.

Confucius taught that in the orderliness and smooth-functioning of the natural world lay a model for achieving order in human society. Just as there is a proper order for all things in the universe, there is a proper order to human society. This order could be achieved if every person knew his or her proper place and upheld the responsibilities of that place. Through his definition of five basic human relationships, Confucius provided a guide for ordering the family and society as a whole, which he perceived as an extended family. These five relationships outlined the responsibilities and obedience of:

- child to father
- wife to husband
- friend to friend
- subject to ruler
- younger to elder brother

In Confucian society, the husband and father was the unquestioned authority in all familial relationships. All family members had a duty to obey and respect the male head of household. Just as the male head of household was supreme within the family, the ruler was the unquestioned authority for the extended family, which was society at large. All people had the responsibility of honoring and obeying their ruler. However, this responsibility worked in two ways. The ruler also had responsibilities to his people. The ruler had to protect, insure the welfare, and set a good example for the people through his own actions. Confucius taught that if the ruler were honest, his people would also be honest, but if the ruler were corrupt, how could he expect anything different from his subjects? Confucius taught that if everyone upheld these basic relationships, social and political order would prevail.

In time, Confucianism spread and was adopted by the people of other Asian countries. Confucianism appealed to the Japanese in part because it reinforced the Japanese people's reverence for nature and sought to find in nature models for the human-made world.

Moreover, as a political doctrine, Confucianism's emphasis on the supreme authority of the ruler was a very useful tool in reinforcing the status and authority of Japan's imperial house. In the early 1600s, Confucianism became the political doctrine of the Tokugawa government, which sought to unify Japan in a feudal system. Confucianism was used to justify the Tokugawa's feudal, hierarchical class structure, with the emperor at the top, and feudal lords, officials, and commoners in descending social rank.

Part B

Confucius on social relationships and government:

I. Master Yu said, "Those who in private life behave well towards their parents and elder brothers, in public life seldom show a disposition to resist the authority of their superiors. And as for such men starting a revolution, no instance of it has ever occurred. It is upon the trunk that a gentleman works. When that is firmly set up, the Way grows. And surely proper behavior towards parents and elder brothers is the trunk of Goodness." (1:2)

II. The Master said, "A country of a thousand war-chariots cannot be administered unless the ruler attends strictly to business, punctually observes his promises, is economical in expenditure, shows affection towards his subjects in general, and uses the labor of the peasantry only at the proper times of the year." (1:5)

III. The Master said, "Govern the people by regulations, keep order among them by chastisements, and they will flee from you, and lose all self-respect. Govern them by moral force, keep order among them by ritual and they will keep their self-respect and come to you of their own accord." (2:3)

IV. Chi K'ang-tzu asked whether there were any form of encouragement by which he could induce the common people to be respectful and loyal. The Master said, "Approach them with dignity, and they will respect you. Show piety towards your parents and kindness toward your children, and they will be loyal to you. Promote those who are worthy, train those who are incompetent; that is the best form of encouragement." (2:20)

V. Duke Ting (died 495 B.C.) asked for a precept concerning a ruler's use of his ministers and a minister's service to his ruler. Master K'ung replied saying, "A ruler in employing his ministers should be guided solely by the prescriptions of ritual. Ministers in serving their ruler, solely by devotion to his cause." (3:19)

VI. Duke Ching of Ch'i asked Master K'ung about government. Master K'ung replied saying, "Let the prince be a prince, the minister a minister, the father a father and the son a son." The Duke said, "How true! For indeed when the prince is not a prince, the minister not a minister, the father not a father, the son not a son, one may have a dish of millet in front of one and yet not know if one will live to eat it." (12:11)

VII. Chi K'ang-tzu asked Master K'ung about the art of ruling. Master K'ung said, "Ruling (cheng) is straightening (cheng). If you lead along a straight way, who will dare go by a crooked one?" (12:17)

VIII. The Master said, "If the ruler himself is upright, all will go well even though he does not give orders. But if he himself is not upright, even though he gives orders, they will not be obeyed." (13:8)

IX. Confucius said, "In serving his parents, a son may gently remonstrate with them. When he sees that they are not inclined to listen to him, he should resume an attitude of reverence and not abandon his effort to serve them. He may feel worried, but does not complain."

Analects appear in Wade-Giles translation. All translations and annotations from Arthur Waley, *The Analects of Confucius* (London: George Allen and Unwin, Ltd., 1938; reprinted by Vintage Books, New York).

ANALYSIS SHEET

Use the Confucian analects, or stories, from Handout J-1 to answer the questions below.

1. Which stories illustrate Confucius' ideas about the responsibilities of a child to his father?

2. According to Confucius, how does the proper relationship between parent and child transfer to the ideal relationship between a subject and ruler?

3. Which stories illustrate Confucius' ideas about the responsibilities of a ruler to his subjects?

4. Specifically, what responsibilities did a ruler have to his subjects?

5. Which stories emphasize the importance of the ruler's setting a moral example for the people?

6. Which stories present the Confucian belief that if everyone fulfills his proper position in society, society will run smoothly?

DILEMMAS

For each of the situations below, describe how people in a Confucian society might respond and why.

1. A group of villagers is harvesting the rice crop in the fields when a messenger rides up on horseback to announce that taxes are going up; the villagers must now give over one-half of their crop as taxes to the ruler.

2. A young man is informed by his father that a marriage partner has been found for him. His future bride will be the daughter of a neighboring family. Although the son has no feelings for his designated bride, the dowry from this marriage will enable his family to expand their landholdings.

3. A landlord calls on all able-bodied men to help fight a war with a rival landlord. The time is the height of the planting season. The men are needed at home to care for the rice crop.

4. A *samurai* warrior is ordered by his *daimyo* (feudal lord) on a mission, which the *samurai* thinks will be a suicide mission.

2

GEOGRAPHY AND PERCEPTIONS OF INDIVIDUAL SPACE IN JAPAN

Introduction: Students conduct a simulation to appreciate population density and space pressures on the Japanese. They hypothesize about how lack of space might have influenced notions about the individual and individual freedom in Japanese society. This brief activity provides a graphic introduction to Lesson 3 on Japanese social relations.

Objectives: Students will be able to:

1. Understand the relationship between land area and population density in Japan.
2. Explain why Japan is a crowded nation.
3. Simulate population density in Japan and the United States.
4. Make inferences about social relationships and values based on population comparisons.

Materials: 3 chairs

Time Required: 1/2 class period

Procedure:

1. Ask students if they can imagine 5 billion people. Can they imagine 240 million people? 120 million people? Explain that some numbers are so large it is hard to grasp what they mean.

2. Tell students that Japan has more than 120 million people. Explain that these people live in an area a little smaller than California. It is not just the number of people that makes Japan crowded, however. Geography and climate have made many places uninhabitable. The island of Hokkaido in northern Japan is both mountainous and cold. Few people live there; the Japanese think of this island as their frontier, their unexplored wilderness. While the climate is better on the other Japanese islands, inland mountains force most people to live in the low coastal areas of each island.

3. Explain that the class will conduct a simulation to get a better idea of the land and population of Japan and the United States. The simulation compares Japan and California, a state with the approximate land area of Japan. Set out three chairs, explaining that each chair represents approximately 50,000 square miles, or a total of 150,000 square miles, the approximate size of California. Write these statistics on the chalkboard for reference.

4. Ask for three student volunteers. Explain that each volunteer represents approximately 10 million people. Together the three students represent the population of California, approximately 30 million people. Ask the students to sit on the chairs. Did each student get his or her own space? Do they feel comfortable? Do they have enough room?

Activity adapted from Elgin Heinz, "Using Statistics About People and Places," in *Opening Doors: Contemporary Japan* (New York: The Asia Society, 1979), p. 129.

5. On the same three chairs, now representing the size of Japan, ask 12 volunteers to sit. Remind students that this group represents 120 million people, close to Japan's estimated population of 124 million. Next, quickly remind them that most of Japan's land is not habitable because of mountains, etc., and that to get an accurate picture of Japan's population density, all 12 people would need to be confined to 1/6 of Japan's area, or about 1/2 of a chair.

6. Debrief the simulation by asking students what images they get of Japan's population density. Of the United States' population density? What space luxuries does the United States have that Japan does not? Ask students to consider population density in each country and hypothesize about personal relationships and interactions in the two countries. Why might it be especially important for people to get along with each other in Japan? In which society would they expect more emphasis on individual space or freedom? Why? From this activity, the class may move directly into Lesson 3.

3

THE INDIVIDUAL IN JAPANESE SOCIETY

Introduction: This lesson, which includes a lecture, discussion, and dilemmas, assists students in understanding the Japanese value of societal or collective, rather than individual, welfare. Students recognize Japan's cultural emphasis on individual duties and responsibilities rather than individual rights and freedoms. The lesson provides a foundation for considering the rights and duties of the Japanese as expressed in the 1889 Meiji Constitution and the 1947 Showa, or MacArthur, Constitution.

Objectives: Students will be able to:

1. Compare and contrast the cultural values and concepts underlying the individual's role in society, as expressed in American and Japanese proverbs.

2. Analyze and apply a set of "rules" or values for getting along in Japanese society.

3. Appreciate the importance of collective welfare and individual duties and responsibilities in Japanese society.

4. Hypothesize how a long cultural tradition that emphasizes the collective welfare over individual well-being would influence the legal guarantee of individual rights in Japan.

Materials: Copies of Handouts J-4 and J-5

Time Required: 1 class period

Procedure:

1. Write the following proverb on the chalkboard: The squeaky wheel always gets the grease. (Western) Ask students to explain what they think this proverb means. Students should note that the proverb implies that one must speak up, be assertive, or make himself or herself noticed to get what he or she wants or needs. Ask students to comment on what they think the proverb reflects about the role of the individual and/or the value placed on individual wants and needs in our society.

2. Next, write the following proverb on the chalkboard: The nail that sticks up gets hammered down. (Japanese) Again, ask students to explain what they think the proverb means. Students should be able to explain that in this case, calling attention to one's self is seen as a negative trait; one who calls attention to himself or herself is put back in place, made equal with the rest. What do students think this proverb reflects about the role or value of the individual in Japanese society? How does this view compare with the Western view reflected in the previous proverb?

3. Present the information in the **Teacher Background Notes**, Part A, through an introductory lecture. Main points to stress are the Japanese traditional emphasis on the collective good rather than

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Handouts J-4 and J-5 and portions of the Teacher Background Notes explaining these two handouts are reproduced from Judith Berling, *How to Get Along in Japanese Society* (Bloomington, IN: Midwest Program for Teaching About Japan, Indiana University); developed by the author for a series of teacher workshops.

individual good and the resulting emphasis on individual duties and responsibilities rather than individual rights. Students should recognize a distinct contrast between this social orientation and the relationship between the individual and society as a whole in the United States. If students have completed Lesson 1 on Confucianism, ask them to comment on how Confucian principles and values are reflected in the relationship between the individual and society in Japan.

4. Distribute Handout J-4. Explain that, while no list of rules can convey the complexity of a society, this hypothetical list of simple rules reflects real Japanese social values and principles that the Japanese use to guide social interactions. Read through and discuss each rule with the class, using the **Teacher Background Notes**, Part B, to inform and guide discussion.

5. Divide the class into five small groups and distribute Handout J-5, assigning one situation to each group. Each group will read the situation and decide how it would be solved, using the "rules" to support their decision. Ask each group to report on its situation and how it was resolved, citing the rules it used to make its decision. The **Teacher Background Notes**, Part C, provide the probable solutions.

6. To extend the lesson, have the class or small groups generate a parallel set of rules for getting along in American society. How did the rules they created differ from the Japanese rules? How would the situations be resolved in the United States?

7. Close the lesson by having the class refer to the two proverbs. Do the Japanese rules provided in this activity reinforce the message of the Japanese proverb? How or how not? Given this social orientation and values, would students expect Japan to have a strong political/legal tradition of individual rights and freedoms? Ask students to explain.

Teacher Background Notes

Part A: Basic Values In Japanese Society

Collective rather than individual well-being is a fundamental principle or value in Japanese society. Group needs and welfare are perceived as more important than individual needs or wants. An individual's sense of identity—his very legitimacy as a person—is tied to his membership in and work towards the goals of the groups to which he belongs, be they family, company, school, or nation. This emphasis on the collective good in Japanese society may be tied to traditional notions of the Japanese people as a national family all descended from an original emperor; to the economic and social pressures and demands of a population living so closely together in a small geographic space; and to Confucian principles of social cooperation and order.

A corollary to this ideal of collective welfare is a social emphasis on individual duties and obligations rather than individual rights and freedoms. People are taught to think about and behave according to what they can do to promote the general welfare, rather than what they are entitled to as individuals. In the Japanese view, individual rights and freedoms are, by definition, selfish and self-serving because they require one to put his or her own needs before those of the group.

Part B: Explanation of the Rules for Getting Along In Japanese Society

For Rule 1. The Japanese sense of self does not rest on the individual but on the social self, as a member of an ongoing family line, a resident of a village, a worker in a company. They see the Western view of the individual as rootless, lonely, and depressing. They want to be part of an ongoing human stream. Our notions of self-fulfillment and happiness are highly individualistic, and we see risking loneliness or unpopularity in a noble cause as the highest of human activities. The Japanese would see the highest good as being able to convince the group to recognize the moral demands of life.

For Rule 2. Social pressure in Japanese society supports the traditional values. Since they do not put self-fulfillment first, it is natural that they should dissuade "wrong-headed rebels" who are threatening to give up the all-important sense of belonging for some individual whim that may not prove very satisfying. The young and restless are counseled to be patient and maintain their ties with family, friends, and work until their point is seen and understood, if ever. The cost of alienation is simply too great to risk for some "selfish" purpose, and they do not want the person to end up lonely and bitter.

For Rule 3. Each person, depending on his or her place in society, has certain obligations and modes of behavior expected of him/her. So long as he/she fulfills these rules, he/she belongs and is accepted. Far from seeming oppressive, these rules give the individual an easy way of belonging. In American society, there are very few rules, and belonging (especially to family and/or peer group) depends on intangible feelings, sense of compatibility, and so on. The Japanese find American society very difficult, because one is never sure when one belongs, or exactly what is expected.

For Rule 4. The lifetime employment system in Japan offers great security for the individual. Once you are hired, you are "safe," and you need not worry about belonging. Likewise, family and social ties are much more enduring in Japan; friends are friends for life. The cost of alienation from family or friends is much higher. A "healthy" individual is expected to remain part of the same group for life, and he/she feels great acceptance in having this stable group of old friends and family.

For Rule 5. "Face" is the person's reputation for integrity. When one loses "face" by an unacceptable social act, the loss of "face" is not merely the person's shame, but also reflects on his group and, in particular, on the leader of the group. This group responsibility not only determines group culpability, but it means that the group and the leader take much more responsibility for guiding the member's behavior than in our culture; a team member is not just a member because of a "contract," but rather the group works together to give each other guidance and support.

For Rule 6. This value comes from Japan's feudal tradition, and it represents one aspect of the reciprocal relationship involved in the strong loyalty to group and superiors expected in Japanese society. It is not a matter of loyalty to an arbitrary dictator; the burden of the leader is very heavy. He is very responsible for the actions and character of those under him. An error by an underling is ultimately his responsibility, and he must assume public responsibility for it. To prevent such disasters, the Japanese leader understandably takes a strongly paternalistic interest in those under him.

For Rule 7. Japanese society is hierarchical, and the levels are determined by age and seniority. Again, the Japanese view of the individual determines this. In the Western sense, competition on the basis of individual ability and achievement makes sense, since our society seeks to maximize fulfillment of each individual according to his capabilities. However, if group identity and belonging are more important than individual success, the rules for "advancement" must not undermine the sense of team solidarity, the sense of mutual trust and belonging. Thus, you try to minimize competition within the group, while maximizing the success of the group as a whole.

For Rule 8. Westerners tend to believe that groups should be organized to allow individuals maximum freedom to pursue their interests and dreams; if we are "held back" by job or by friendships, we will tend to counsel people to leave them behind, to do *what's best for them.* In Japan, some people do this, but the cost has traditionally been very great—one is cut off from friends and family. The best parallel, perhaps, is our reaction to someone who would betray friendships and step on anyone in his way to succeed. It is not that the Japanese do not dream dreams, but they are very aware of the cost in loneliness and suffering.

For Rule 9. The Japanese family is not just the living members, but all of the ancestors and descendants; it is a family line. They will thus be very loathe to gamble the family wealth (land, business, etc.) in a venture that is the dream of one individual. They want to insure a future, not just for the next generation, but for many generations. Likewise, a business will be suspicious of short-term solutions to problems; they will ask workers and management to make more sacrifices for the long-term.

For Rule 10. Because of our concept of individuality and individual fulfillment, we tend to see life as "the individual against the system," and we calculate how to play the rules of the system so as to get the most for ourselves. In Japan, because the concept of self is more social or group-oriented, it *is* more satisfying to work for group fulfillment. They don't feel that they are making some tragic sacrifice in subordinating individual interests for group interests; they feel an enormity of sacrifice when their individual interests drive them to alienate themselves from a group.

Part C: Resolutions of the Situations

1. Yoshi should remarry and work in the lumber company. He has obligations to his family to provide descendants, and to the family business to keep it prospering for posterity. **Note:** For Yoshi, having brothers who could step in and carry on the family line would be another matter; he still might be under family pressures to carry on the business, but if he persisted they would probably give in provided another son was able to carry on. They might even give him some money to get his car dealership going, if that investment did not threaten the family's long-term prosperity.

2. Mr. Hirai will not support the promotion of Midori over her coworkers for a number of reasons. A manager's primary function is to make sure that people work well together. This is particularly true in Japan. Midori's talents have been identified as artistic, not managerial. Furthermore, Japanese sex roles are clearly and narrowly defined. There are talented women, strong-willed women, and ambitious women in Japan (just as there are everywhere else), and such women are hard to hold back, but the Japanese ideal of youthful femininity includes submissiveness and not dominance. Men are expected to dominate women and in most circumstances would find it very difficult to be subordinate to a woman. Mr. Hirai will not wish to introduce such tensions into his work group unnecessarily. Finally, most Japanese women expect, and are expected, to get married and quit work in their mid-twenties. Mr. Hirai too will expect Midori to leave soon. He fears a promotion would only disrupt her friendship with coworkers while she remains on the job. Furthermore, a promotion might make her appear too aggressive or self-assertive and, therefore, undesirable as a marriage partner. Mr. Hirai hopes to help Midori by introducing her to a suitable young man. In short, while he may wish to acknowledge Midori's excellence, he will feel that promotion is not the way to do it and will support the promotion of a man. **Note:** Many Japanese corporations have a two-tiered hiring system. Only men are hired as regular employees. All women are hired as temporary employees and are not entitled to standard pay raises, benefits, etc. In such a company Midori could not be considered for promotion.

3. Takashi will join Yamamoto Machine Tool, the more personal (some might say more paternalistic) company. The Japanese regularly choose to invest their work relations with complex emotional ties, often of a family-like nature. Japanese generally prefer working arrangements that go beyond a strictly contractual exchange of labor for money. Japanese national surveys show that more than three-quarters of the respondents would rather have an employer who showed a personal interest in them, even if he demanded extra work. A similar number of people say they would accept lower wages in exchange for a family-like atmosphere with outings and sports days.

4. Not only would the principal ask the teacher to publicly apologize and resign, but he himself would resign because he is responsible for his teachers. He would take responsibility on himself. His resignation might not be accepted, but it would be expected.

5. He would betroth one of his daughters to a promising young man and *ask the young man to take his family name.* In other words, the man would not only be his son-in-law, but his adopted son. Thus, all of their children would have the family name and could carry on the family line.

Handout J-4

RULES FOR GETTING ALONG IN JAPANESE SOCIETY

1. You are a team member. When the team wins, you win. When the team loses, you lose. (You are a member of several teams—family, village, place of work, country.)

2. Team members must obey the rules of the team, or they will be "benched." Their teammates expect them to "play fair," or they will not associate with them.

3. Team members are expected to play their role faithfully and perform their function for the team.

4. You cannot switch teams; you belong to a team for life.

5. If one team member makes a mistake or gets into trouble, the reputation of the entire team is ruined. The mistake is simply not his or hers. Thus, team members will work together to try to avoid all mistakes.

6. The team leader is responsible for the whole team; he assumes *public* responsibility for their errors. They, in turn, are personally responsible to him. Since no one is expected to change teams, the team leader cannot simply "get rid of" a bad player; he must work very hard to build a first-rate team with the players he has.

7. First, second, and third string are determined by age (seniority). People of the same age have the same rank, and they "move up" together. This promotes internal cooperation and teamwork, rather than jealousy and competition to "get ahead."

8. The best rewards in life are for good team work. Individual success may be nice, but it is not shared and does not increase one's sense of belonging to the team. Individual success is permitted as long as it does not threaten one's commitment to the team and one's solidarity with team members.

9. A team is defined not only by its present members; it has a tradition. It includes all players of the past and potential players of the future. The short-term success of the moment is never allowed to endanger the built-up reputation of the team, or its possibilities for future success. Thus, the team not only wants to win this game and this pennant, but—most importantly—to prepare for the best possible record over the long term.

10. Team spirit requires the good will and total commitment to the team of all its members. They cannot make a show of team spirit while secretly thinking only of themselves.

SITUATIONS

1. Yoshi is the only child of a wealthy family that owns a lumber company. His wife, whom he loved dearly, died in childbirth just a year ago. He has no desire to remarry; he loved his wife too much. Taking another wife would seem an insult to her memory. However, his parents want him to marry again, because they want a grandchild to inherit the lumber company. Actually, Yoshi does not like the lumber business. If he had his way, he would move to Tokyo and become a car dealer.

   What would Yoshi do? Support your decision with the rules you have.

2. Mr. Hirai is chief of the design department in a large company that manufactures ready-to-wear clothing. He takes a deep interest in all his employees and feels a responsibility for their personal contentment as well as for the smooth functioning of his department. The group of five men and three women who entered the department together three years ago have finished their period of internship. The time has come for one of them to be promoted to subsection chief. In informal discussions among the supervisors, Midori, one of the young women, has been noted as having unusual talent in design. Not only does she have excellent design skills, but it has become clear that she is able to anticipate fashion trends. Midori's fashion sense might be very profitable for the company.

   Would Mr. Hirai promote Midori? Support your decision with the rules you have.

3. Takashi is finishing his last year in trade school, where he is learning to be a machine tool operator. He received offers from two small companies for jobs following graduation but is not sure which to choose. Hirano Tool and Die pays better. Mr. Hirano expects a good day's work for his money, but he does not press employees into extra services. Mr. Hirano certainly does not try to interfere in people's personal lives. When the work day is over, everyone is free to lead his own life. At Yamamoto Machine Tool, on the other hand, the wages are not as good, but there are a number of special benefits like an annual company outing and a company baseball team. Mr. Yamamoto frequently takes workers out for dinner and drinks, although it is very difficult not to go even if you would rather not. While Mr. Yamamoto frequently asks employees to work late or give up vacation days, even when there are rules against it, he is equally likely to bend rules to help a worker who has personal problems.

   Which company would Takashi join? Support your decision with the rules you have.

4. The seventh-grade teacher, Sato sensei, used some extremely offensive language in the classroom. The shocked students told their parents, who have come to complain to the principal, Mr. Tanabe.

   What would Mr. Tanabe do? Support your decision with the rules you have.

5. Mr. Akiyama, founder of a number of successful restaurants, has no sons to inherit his empire, only three daughters.

   How would Mr. Akiyama go about ensuring an heir? Support your decision with the rules you have.

4

THE MEIJI CONSTITUTION IN HISTORICAL CONTEXT

Introduction: In this activity, students study the historical context of the Meiji Constitution, Japan's first modern, national constitution. Students are introduced to the historical factors precipitating the writing of the constitution through a brief lecture. They then use knowledge gained in earlier lessons about fundamental Japanese philosophy, values, and national experiences to analyze the Meiji Constitution.

Objectives: Students will be able to:

1. Describe factors leading to the promulgation of the Meiji Constitution in 1889.

2. Analyze the Meiji Constitution as an expression of Japanese political and social traditions, values, and national experience.

3. Hypothesize which essential elements of the Meiji Constitution would conflict with political and social goals of the United States in reforming a defeated Japan in the 1940s.

Materials: Student notes and worksheets from previous lessons; copies of Handouts J-6 and J-7.

Time Required: 1-2 class periods

Procedure:

1. Review with students what they have learned about fundamental Japanese social and political values and traditions. Students should be able to explain how the emperor came to be the ultimate authority in Japan, discuss elements of Confucian philosophy reflected in Japanese social and political organization, and talk about the relationship between the individual and society in Japan.

2. Provide students with a brief lecture on the details of the Meiji Restoration and Constitution, as outlined in the **Teacher Background Notes**.

3. Introduce the activity by explaining that the success or workability of a constitution is directly related to how well it fits a nation's history, social and political values, and practices. In this activity, students will apply what they have learned about traditional Japanese culture and values to analyze the Meiji Constitution, Japan's first constitution, and to decide whether that document effectively embodied national values, character, and traditions.

4. Divide the class into pairs or small groups. Distribute Handouts J-6 and J-7. Groups will conduct a preliminary analysis of the Meiji Constitution by answering the questions about the first three sections of the Constitution (Preamble, The Emperor, Rights and Duties of Subjects) contained in Part A of the analysis sheet.

5. Using the answer key as a guide, discuss student findings in class. Students should have discovered that the Constitution emphasizes the importance of ancestors and descendants, the unbroken line of the imperial throne, the ultimate authority of the emperor, the sovereignty that rests with the emperor and not the people, and the limitations of all individual rights by laws or by perceptions of national good.

Focus discussion on the rights and duties section of the document. If all rights can be limited by existing or new laws, what protection do the people have in exercising their rights? How effective do students think the rights section of the Meiji Constitution was? Given what they know about the relative importance of the individual and society as a whole in Japan, do students think the Japanese objected to the limits on their rights? Why or why not?

6. Turn students' attention to Part B of Handout J-7. For an in-class or homework assignment, students should write an essay in which they analyze the Meiji Constitution as a product of Japanese history and culture.

7. When students have completed their assignment, have them present their arguments in class. Did students generally find the document to be a reflection of the culture? Students may want to know that most scholars believe this to be the case. Professor John Maki has cited continuity with Japan's historical past as the key to the Meiji Constitution's success. In his book, *Japan: Images and Realities*, political scientist Richard Halloran states: "There is no better example of Japanese substance expressed in Western form than this constitution. It crystallized Japanese concepts of national character, sovereignty, social order, and the function of government into a Western-style document not known before in Japan. The constitution embodied Japan's unique national essence, with the emperor at its center; it embraced the sum of Japan's religious, moral, ethical, and social thought" (page 24).

Handout J-7 Answer Key: 1. The Japanese people were all said to have descended from the original emperor. Honoring the national ancestors, the unbroken imperial line, was essential to the identity, the very legitimacy of the Japanese nation; **2.** Sovereignty—authority to govern—rested with the emperor; **3.** Right to rule, to convoke and dissolve the legislature, to issue Imperial Ordinances in emergencies, to command the army and navy, to declare war and make treaties, to confer titles of nobility and rank, to order amnesties and punishments, and so on (See Articles I-XVII); **4.** Military service, taxation (Articles XX-XXI); **5.** Liberty of residence, trial by judge, privacy, private property, religion, petition (Articles XXII-XXX); **6.** All; **7.** Freedom of residence limited by law (XXII); freedom from search and seizure limited by cases provided for in law (XXV, XXVI); private property limited by interests of public welfare (XXVII); freedom of religion limited by peace and order and their duties as subjects of the emperor (XXVIII); freedom of petition limited by proper respect for authority and by special rules (Article XXX); **8.** Laws and ordinances have the power to limit the exercise of rights granted in the constitution,; thus, the constitution would appear not to regard itself as the highest law; **9.** The welfare of the state. Students should note that the constitution elaborates more rights, but because so many are limited by the interests of public welfare, respect for authority, peace and order, and so on, the result is a constant emphasis on duties; **10.** No checks and balances; **11.** The constitution created a strong executive in the emperor and his advisors, who had complete control of the military and could override the legislature.

Teacher Background Notes:

With the arrival of U.S. Commodore Perry and his "black ships" in 1853, Japan was confronted with the threat and challenge of dealing with the industrialized, nonfeudal world of the West, from which it had severed all contact in 1639. Japan chose a path of rapid industrialization as the most viable response to the challenge from the outside. The growing pressure for political, social, and economic change in the 1850s led to the ultimate downfall of the Tokugawa shogunate, which had been declining after almost two centuries of rule over a feudal Japan. Political power was ostensibly returned to the imperial throne in 1868 with the Meiji Restoration. While power was actually held by the emperor's cabinet, the emperor once again became the symbol of national political power.

Among the sweeping political, social, and economic changes undertaken by the new government in its effort to industrialize Japan was the writing of a national constitution, begun in 1886. The Japanese studied many national models for their constitution. They rejected the model offered by the United States because its fundamental principle that sovereignty rested with the people was incompatible with imperial rule, a cornerstone of Japanese history. The U.S. model also emphasized individual rights. The Japanese ultimately turned to the German constitutional model as the one most adaptable to the traditions and needs of the Japanese state. The Japanese Constitution was promulgated in February 1889 as a gift from the Meiji emperor to his people.

For additional background information, see Masahide Bito and Akio Watanabe, *A Chronological Outline of Japanese History* (Tokyo: International Society for Educational Information, Inc., n.d.), pp. 1-21; "The Meiji Constitution," excerpted from Mikiso Hane, *Japan: A Historical Survey* (New York: Charles Scribner's Sons, 1972), pp. 319-321.

THE CONSTITUTION OF THE EMPIRE OF JAPAN

(Meiji Constitution, 1889)

The Preamble

Having, by virtue of the glories of Our Ancestors, ascended the throne of a lineal succession unbroken for ages eternal; desiring to promote the welfare of, and to give development to the moral and intellectual faculties of Our beloved subjects, the very same that have been favoured with the benevolent care and affectionate vigilance of Our Ancestors; and hoping to maintain the prosperity of the State, in concert with Our people and with their support, We hereby promulgate, in pursuance of Our Imperial Rescript of the 12th day of the 10th month of the 14th year of Meiji, a fundamental law of State, to exhibit the principles, by which We are to be guided in Our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.

The rights of sovereignty of the State, We have inherited from Our Ancestors, and We shall bequeath them to Our descendants. Neither We nor they shall in future fail to wield them, in accordance with the provisions of the Constitution hereby granted.

We now declare to respect and protect the security of the rights and of the property of Our people, and to secure to them the complete enjoyment of the same, within the extent of the provisions of the present Constitution and of the law.

The Imperial Diet shall first be convoked for the 23rd year of Meiji and the time of its opening shall be the date when the present Constitution comes into force.

When in the future it may become necessary to amend any of the provisions of the present Constitution. We or Our successors shall assume the initiative right, and submit a project for the same to the Imperial Diet. The Imperial Diet shall pass its vote upon it, according to the conditions imposed by the present Constitution, and in no otherwise shall Our descendants or Our subjects be permitted to attempt any alteration thereof.

Our Ministers of State, on Our behalf, shall be held responsible for the carrying out of the present Constitution, and Our present and future subjects shall forever assume the duty of allegiance to the present Constitution.

The Emperor

Article I: The Empire of Japan shall be ruled over by Emperors of the dynasty, which has reigned in an unbroken line of descent for ages past.

Article II: The succession to the throne shall devolve upon male descendants of the Imperial House, according to the provisions of the Imperial House Law.

Article III: The person of the Emperor is sacred and inviolable.

Article IV: The Emperor being the Head of the Empire the rights of sovereignty are invested in him, and he exercises them in accordance with the provisions of the present Constitution.

Johannes Siemes, *Hermann Roesler and the Meiji State* (Tokyo: Sophia University in cooperation with Charles E. Tuttle Company, 1968), pp. 53-252.

Article V: The Emperor exercises the legislative power with the consent of the Imperial Diet.

Article VI: The Emperor gives sanction to laws, and orders them to be promulgated and put into force.

Article VII: The Emperor convokes the Imperial Diet, opens, closes, and prorogues it, and dissolves the House of Representatives.

Article VIII: In case of urgent necessity, when the Imperial Diet is not sitting, the Emperor, in order to maintain the public safety or to avert a public danger, has the power to issue Imperial Ordinances, which shall take the place of laws. Such Imperial Ordinances shall, however, be laid before the Imperial Diet at its next session, and should the Diet disapprove of the said Ordinances, the Government shall declare them to be henceforth invalid.

Article IX: The Emperor issues, or causes to be issued, the ordinances necessary for the carrying out of the laws, or for the maintenance of public peace and order, and for the promotion of the welfare of his subjects. But no Ordinance shall in any way alter any of the existing laws.

Article X: The Emperor determines the organisation of the different branches of the Administration; he fixes the salaries of all civil and military officers, and appoints and dismisses the same. Exceptions specially provided for in the present Constitution or in other laws shall be in accordance with the respective provisions bearing thereon.

Article XI: The Emperor has the supreme command of the army and navy.

Article XII: The Emperor determines the organisation and peace standing of the army and navy.

Article XIII: The Emperor declares war, makes peace, and concludes treaties.

Article XIV: The Emperor proclaims the law of siege. The conditions and operation of the law of siege shall be determined by law.

Article XV: The Emperor confers titles of nobility, rank, orders, and other marks of honour.

Article XVI: The Emperor orders amnesty, pardon, commutation of punishments, and rehabilitation.

Article XVII: The institution of a Regency shall take place in conformity with provisions of the Imperial House Law.

The Regent shall exercise the supreme powers which belong to the Emperor in his name.

The Rights and Duties of Subjects

Article XVIII: The conditions necessary for being a Japanese subject shall be determined by law.

Article XIX: Japanese subjects shall all equally be eligible for civil and military appointments, and any other public offices, subject only to the conditions prescribed by Laws and Ordinances.

Article XX: Japanese subjects are amenable to service in the army or navy, according to the provisions of law.

Article XXI: Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.

Article XXII: Subject to the limitations imposed by law, Japanese subjects shall enjoy full liberty in regard to residence and change of abode.

Article XXIII: No Japanese subject shall be arrested, detained, tried or punished, except according to law.

Article XXIV: No Japanese subject shall be deprived of his right of being tried by judges determined by law.

Article XXV: Except in the cases provided for in the law, the house of no Japanese subject shall be entered or searched without his permission.

Article XXVI: Except in cases provided for in the law, the secrecy of the letters of Japanese subjects shall not be violated.

Article XXVII: The rights of property of Japanese subjects shall not be violated. Such measures, however, as may be rendered necessary in the interests of the public welfare shall be taken in accordance with the provisions of the law.

Article XXVIII: Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.

Article XXIX: Japanese subjects shall, within the limits of the law, enjoy liberty in regard to speech, writing, publication, public meetings, and associations.

Article XXX: Japanese subjects may present petitions, provided that they observe the proper form of respect, and comply with the rules specially provided for such matters.

Article XXXI: The provisions contained in the present chapter shall not interfere with the exercise, in times of war or in case of national emergency, of the supreme powers which belong to the Emperor.

Article XXXII: Each and every one of the provisions contained in the preceding articles and of the present shall, in so far as they do not conflict with the laws or the rules and discipline of the army and navy, apply to the officers and men of the army and of the navy.

The Imperial Diet

Article XXXIII: The Imperial Diet shall consist of two Houses: the House of Peers and the House of Representatives.

Article XXXIV: The House of Peers shall, in accordance with the Ordinance concerning the House of Peers, be composed of members of the Imperial Family, of Nobles, and of Deputies who have been nominated by the Emperor.

Article XXXV: The House of Representatives shall be composed of members elected by the people, according to the provisions of the Law of Election.

Article XXXVI: No one can at one and the same time be a member of both Houses.

Article XXXVII: Every law requires the consent of the Imperial Diet.

Article XXXVIII: Both Houses shall vote upon projects of law submitted to it by the Government, and may respectively initiate projects of law.

Article XXXIX: A Bill, which has been rejected by either the one or the other of the two Houses, shall not be again brought in during the same session.

Article XL: Both Houses can make representations to the Government, as to laws or upon any other subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.

Article XLI: The Imperial Diet shall be convoked every year.

Article XLII: A session of the Imperial Diet shall last during three months. In case of necessity, the duration of a session may be prolonged by Imperial Order.

Article XLIII: When urgent necessity arises, an extraordinary session may be convoked, in addition to the ordinary one.

The duration of an extraordinary session shall be determined by Imperial Order.

Article XLIV: The opening, closing, prorogation of session and prorogation of the Imperial Diet, shall be effected simultaneously for both Houses.

In case the House of Representatives has been ordered to dissolve, the House of Peers shall at the same time be prorogued.

Article XLV: When the House of Representatives has been ordered to dissolve, Members shall be caused by Imperial Order to be newly elected, and the new House shall be convoked within five months from the day of dissolution.

Article XLVI: No debate can be opened and no vote can be taken in either House of the Imperial Diet, unless not less than one third of the whole number of the Members thereof is present.

Article XLVII: Votes shall be taken in both Houses by absolute majority. In the case of a tie vote, the President shall have the casting vote.

Article XLVIII: The deliberations of both Houses shall be held in public. The deliberations may, however, upon demand of the Government or by resolution of the House, be held in secret sitting.

Article XLIX: Both Houses of the Imperial Diet may respectively present addresses to the Emperor.

Article L: Both Houses may receive petitions presented by subjects.

Article LI: Both Houses may enact, besides what is provided for in the present Constitution and in the Law of the Houses, rules necessary for the management of their internal affairs.

Article LII: No Member of either House shall be held responsible outside the respective Houses, for any opinion uttered or for any vote given in the House. When, however, a Member himself has given publicity to his opinions by public speech, by documents in print or in writing, or by any similar means, he shall, in the matter, be amenable to the general law.

Article LIII: The Members of both Houses shall, during the session, be free from arrest, unless with the consent of the House, excepting cases of flagrant derelicts, or of offenses connected with a state of internal commotion or with a foreign trouble.

Article LIV: The Ministers of State and the Delegates of the Government may, at any time, take seats and speak in either House.

The Ministers of State and the Privy Council

Article LV: The respective Ministers of State shall give their advice to the Emperor, and be responsible for it.

All laws, public ordinances, and imperial rescripts, of whatever kind, that relate to the affairs of state require the counter-signature of the Minister of State.

Article LVI: The Privy Council shall, in accordance with the provisions for the organisation of the Privy Council, deliberate upon the important matters of State, when they have been consulted by the Emperor.

The Judicature

Article LVII: The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor.

The organisation of the Courts of Law shall be determined by law.

Article LVIII: The judges shall be appointed from among those who possess proper qualifications according to law.

No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment.

Rules for disciplinary punishment shall be determined by law.

Article LIX: Trials and judgments of a Court shall be conducted publicly. When, however, there exists any fear that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provision of law or by the decision of the Court of Law.

Article LX: All matters that fall within the competency of a special Court shall be specially provided for by law.

Article LXI: No suit at law, which relates to rights alleged to have been infringed by the illegal measures of the administrative authorities, and which shall come within the competency of the Court of Administrative Litigation specially established by law, shall be taken cognizance of by a Court of Law.

Finance

Article LXII: The imposition of a new tax or the modification of the rates (of an existing one) shall be determined by law.

However, all such administrative fees or other revenue as are in the nature of compensation for services rendered shall not fall within the category of the above clause.

The raising of national loans and the contracting of other liabilities to the charge of the National Treasury, except those that are provided in the Budget, shall require the consent of the Imperial Diet.

Article LXIII: Existing taxes shall, in so far as they are not altered by new laws, continue to be collected as heretofore.

Article LXIV: The annual expenditure and revenue of the State shall, in the form of an annual Budget, receive the consent of the Imperial Diet. Any expenditure which exceeds the appropriations set forth under the various heads of the Budget or those not provided for in the Budget, shall be referred subsequently to the Imperial Diet for its approval.

Article LXV: The Budget shall be first laid before the House of Representatives.

Article LXVI: The expenditure in respect of the Imperial House shall be defrayed every year out of the National Treasury, according to the present fixed amount for the same, and shall not hereafter require the consent thereto of the Imperial Diet, except in case an increase thereof is found necessary.

Article LXVII: The fixed expenditure based upon the supreme powers of the Emperor and set forth in this Constitution, and such expenditure as may have arisen by the effect of, or as appertains to the legal obligations of the Government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the Government.

Article LXVIII: In order to meet special requirements the Government may ask the consent of the Imperial Diet to a certain amount as a continuing expenditure fund, for a previously fixed number of years.

Article LXIX: In order to supply unavoidable deficits in the Budget, and to meet requirements unprovided for in the same, a reserve fund shall be established.

Article LXX: When there is urgent need for the adoption of measures for the maintenance of the public safety, and when in consequence of the state either of the domestic affairs or of the foreign relations, the Imperial Diet cannot be convoked, the necessary financial measures may be taken by means of an Imperial Ordinance. In such cases as those mentioned in the preceding clause the matter shall be submitted to the Imperial Diet at its next session for its approval.

Article LXXI: When the Imperial Diet has not voted on the Budget, or when the Budget has not been brought into actual existence, the Government shall carry out the Budget of the preceding year.

Article LXXII: The final account of the expenditure and revenue of the State shall be verified and confirmed by the Board of Audit, and it shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said Board.

The organization and competency of the Board of Audit shall be determined by law separately.

Supplementary Rules

Article LXXIII: When it has become necessary in future to amend the provisions of the present Constitution, a project to the effect shall be submitted to the Imperial Diet by Imperial Order.

In the above case, neither House can open the debate, unless not less than two-thirds of the whole number of Members are present, and no amendment can be passed, unless a majority vote of not less than two-thirds of the Members is obtained.

Article LXXIV: No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.

No provision of the present Constitution can be modified by the Imperial House Law.

Article LXXV: No modification can be introduced into the Constitution, or into the Imperial House Law, during the time of a Regency.

Article LXXVI: Existing legal enactments, such as laws, regulations, ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force.

All existing contracts or orders, that entail obligations upon the Government, and that are connected with expenditure, shall come within the scope of Article LXVII.

ANALYZING THE MEIJI CONSTITUTION

Part A

Handout J-6 contains the Meiji Constitution of 1889. Answer the questions below to learn about the first three sections of that constitution—The Preamble, The Emperor, and The Rights and Duties of Subjects.

1. According to the Preamble, what is one of the most important historical characteristics of the Japanese?

2. According to the Meiji Constitution, who or what is the source of authority?

3. List five of the emperor's powers.

4. Which articles deal with the duties of the people? What are these duties?

5. List five basic rights that the people enjoyed under this constitution.

6. Articles XXII through XXX list the rights of Japanese subjects. In how many cases in these articles is some limit or condition put on the exercise of these rights by the people?

7. What limitation is put on liberty regarding residence?
    on freedom from search and seizure?
    on private property?
    on religion?
    on freedom of petition?

8. According to the section on rights and duties of subjects, which seems to have higher authority, the constitution or laws and ordinances? Explain your answer.

9. In general, subjects' freedoms in Meiji Japan were curtailed by what other goal? In your own opinion, does the section on rights and duties of the people give greater emphasis to rights or duties? How does this correspond with traditional Japanese views on the individual in society?

10. Is there any provision for checks and balances/balance of power between the emperor (the executive) and the legislature? If so, what?

11. How do you think this document may have allowed the growth of the strong military dictatorship that developed in Japan prior and through World War II? Cite articles from the constitution.

Part B

In the 1880s, Hirobumi Ito, a Japanese politician, advised that if Japan's experiment with a Western-style document such as a constitution were going to work, that document would have to be a product of the Japanese experience; that is, the constitution would have to embody Japanese concepts of national character, political and social order, and function of government.

According to Ito, "**In the framing of our constitution, our aims must be determined by the ideal of government which conforms with our country's geography, customs and sentiments of the people, and the spirit of the times.**"

In this activity, you should apply what you have learned about the three important strands in traditional Japanese thought—the role of the emperor, Confucianism, and the individual in society—to analyze the Meiji Constitution in light of Ito's statement. Decide whether you think the Meiji Constitution did or did not fulfill Ito's prerequisites for a workable constitution. Prepare an essay in which you argue for or against the Meiji Constitution as a reflection of Japanese experience and culture. Address each of the three traditions. Cite examples from the Constitution that support your position.

5

COMPARING PRINCIPLES OF GOVERNMENT IN THE MEIJI AND U.S. CONSTITUTIONS

Introduction: This exercise provides an extension to Lesson 4 and a lead-in to the lessons on the Showa (MacArthur) Constitution of 1947. Students are provided with the context for the Constitution of 1947. They are asked to apply their knowledge of the U.S. Constitution and the U.S. government to identify concepts in the Meiji Constitution that would contradict American democratic principles and values.

Objectives: Students will be able to:

1. Review and discuss fundamental principles of democratic government as set forth in the U.S. Constitution.

2. Compare and contrast the powers and functions of the branches of government, and the rights and duties of citizens, as articulated in the Meiji and U.S. Constitutions.

3. Identify specific aspects of the Meiji Constitution and the Japanese form of government between 1889 and 1945 that the United States would want to change in order to establish democracy in Japan during the Occupation.

Materials: U.S. Constitution (available in the back of most U.S. history and government textbooks), and the Meiji Constitution from Lesson 4

Time Required: 1-2 class periods, depending on time needed to review the U.S. Constitution

Procedure:

1. Introduce the exercise by explaining that the Meiji Constitution functioned from its promulgation in 1889 through World War II. When Japan was defeated by the Allied powers in World War II, a primary goal of the Occupation forces under U.S. General Douglas MacArthur was to rid Japan of the constitution and the political and social structure which had allowed the military dictatorship to flourish. The Occupation forces, essentially the United States, wanted to build a fledgling democracy in Japan.

2. Review with the class essential principles of government set forth in the U.S. Constitution which would be particularly relevant in comparing our form of government to that of Japan under the Meiji Constitution. These would include the concepts of popular sovereignty, separation of powers as well as checks and balances, separation of church and state, judicial review, and individual rights. Make sure students have a basic understanding of why these concepts are important in our system of government, of what our constitution says about these concepts, and how it ensures them.

3. Divide the class into four groups. Using sections of the U.S. Constitution and their own knowledge of that document as a guide, each group should identify aspects of the Meiji Constitution that they think the United States would object to and want to change in its effort to make Japan a democracy following World War II. Each group should focus on a different aspect of government set forth in the constitutions, as follows: group 1, the preamble and emperor (executive); group 2, the legislature; group 3, the judiciary; and group 4, rights and duties.

4. Allow one class period for group work. Groups should present their arguments to the class as a whole.

6

DICTATING CHANGE: A SIMULATION

Introduction: In this simulation, the class is divided into two groups, each assuming the role of a classroom of students. When an exemplary class is given the assignment of creating a set of rules to help reform another class, students analyze the factors that must be considered to make such an assignment work. Students then transfer their experience to the historical case of Japan in 1947.

Objectives: Students will be able to:

1. Identify barriers to and preconditions for successful group change efforts.
2. Transfer and generalize information from a simulation experience to a historical case.

Materials: Copies of class profiles

Time Required: 1-2 class periods

Procedure:

1. Ask students if they have ever been in the position of being compared to more industrious, better behaved, or otherwise "more ideal" students. What were their reactions to such comparisons? Did they feel admiring and imitative or perhaps resentful or apathetic?

2. Explain that you will be dividing the class into two groups to consider different points of view and different strategies for bringing about changes in behavior/discipline of a hypothetical "problem" class. Divide the class into two groups and distribute the class profiles. Have students read their class profile. Then ask volunteers from each group to describe their group and their group task in the simulation.

3. Allow groups time to work together to complete their assignment. Group 1, Mrs. Mendoza's class, should devise rules for Mr. Schank's class and a plan for implementing them. Group 2, Mr. Schank's class, should devise a list of relevant characteristics about their class that may explain their behavior and a list of conditions under which they might change.

4. Ask a volunteer from group 2 to report their work, followed by group 1. To what extent did group 1's rules and implementation plans account for group 2's characteristics? How would group 2 respond to group 1's rules? With the information now collected, could group 1 create a more workable plan? Is there another way that a workable plan could have been devised?

5. Ask the class to generate a list of guidelines or preconditions for embarking on a reform effort such as they simulated. Then ask students to comment on how their experience compares to the case of Japan following World War II. The Allied forces defeated Japan in August 1945 and immediately thereafter established Occupation forces in the country, under the command of U.S. General Douglas MacArthur. One of the Occupation's chief goals was to replace Japan's old constitution and governmental structure with a new structure that would provide for a democratic country. Japan's government wrote a new constitution, but MacArthur rejected it because it failed to make sufficient democratic reforms. MacArthur's staff then wrote a constitution for Japan.

MRS. MENDOZA'S CLASS PROFILE

You are the students of Mrs. Mendoza's sophomore history class, a model class. Your class is well-behaved with no discipline problems. The class has undertaken numerous community and school service projects, which are an example to the rest of school (e.g., recycling, school cleanup efforts, and so on). You are proud of your reputation. You believe your success is based on commonly-held goals and class cooperation. Because you are models in the school, the principal has come to Mrs. Mendoza's class and asked you to create a plan to help improve Mr. Schank's senior history class. That class has been causing a lot of trouble for the teacher and disrupting other classes in the hall. In other words, the principal would like Mrs. Mendoza's class to remake Mr. Schank's class in its own image. Using the questions below as a guide, develop rules and guidelines to reform this classroom and a plan for putting the guidelines into practice.

1. What is your goal for Mr. Schank's class?
2. Is there any information you should know about Mr. Schank's class if you want your plan to work? If so, what?
3. What rules or guidelines would you make for Mr. Schank's class?
4. How would you implement your plan? That is, how would you teach Mr. Schank's class your rules and insure that they follow the rules?

MR. SCHANK'S CLASS PROFILE

Mr. Schank's senior history class has developed a reputation as a discipline problem. Many members of the class show little interest in the study of history or in schoolwork in general. Members of the class are often in the guidance counselor's or principal's offices for causing problems. In class, teaching and learning proceed very slowly because of so many disruptions. Although Mr. Schank has other classes he considers successful, he has had little success in working with this class. He and the principal have decided that a peer model and peer pressure, as provided by the students of Mrs. Mendoza's class, may offer an avenue for improvement. Using the questions below as a guide, take the role of students in Mr. Schank's class to identify the causes of your difficulties as a class.

1. What would you identify as the three biggest problems in your class? What causes these problems?
2. What information should someone know about your class if they wanted to work with you to change?
3. How do you think the problems with your class might be corrected or improved?

7

BRINGING DEMOCRACY TO JAPAN

Introduction: Through a reading and discussion, students consider the social and political context in which the Japanese Constitution of 1947 was written. Students identify motives and considerations of U.S. General Douglas MacArthur and the U.S. Occupation forces in designing a constitution for postwar Japan. They also identify internal and external pressures on the Japanese to accept a largely foreign-dictated constitution. The activity is designed for use after students have completed their study of World War II through V-J Day.

Objectives: Students will be able to:

1. Identify internal and external factors that led the Japanese to accept the 1947 Constitution.

2. Discuss ways in which MacArthur and the U.S. Occupation forces reconciled American goals for postwar Japan with Japanese cultural, social, and political realities.

Materials: Copies of Handout J-8

Time Required: 1 class period

Procedure:

1. The questions listed below had to be answered by the United States after the surrender of Japan on August 14, 1945. Meeting in small groups, students should discuss and write down at least one reason for their answer to each question.

Question: **Once Japan is occupied, should the Japanese government be totally abolished and replaced by the direct rule of American military authorities?**

(In Germany the Nazi government had disintegrated as Allied troops closed in on Berlin. Following Germany's defeat, the Allies set up military governments to rule in their respective zones of occupation. In Japan, however, the emperor, national legislature (called the Diet), ruling cabinet, and the entire government bureaucaracy all remained in place at the time of the surrender.)

Question: **Should the United States insist that Japan change its constitution in order to establish a democracy?**

(Japan had a written constitution, a "gift" of the Emperor Meiji in 1889. In many respects its wording made it similar to many Western constitutions. However, the Japanese Constitution made the emperor, not the people, the sole source of political authority. Thus, the Meiji Constitution was a blend of Western political thought and Japanese traditions that had developed over the centuries.)

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2. Ask several groups to volunteer their responses to the two questions. Discuss reasons cited. Explain that students will now complete a short reading assignment that will introduce them to the conditions under which the 1947 Constitution was written and the process of its creation. Distribute Handout J-10 to all students and have them read the material.

3. Once students have completed the reading, they should meet in the same groups they did earlier. Each group should again answer the initial questions, but this time according to how the United States, and particularly MacArthur, decided them. Students should identify from their reading at least one reason for their answers.

4. Remind students of the framework from which they analyzed the Meiji Constitution in Lesson 4; that is, that constitutions tend to work if they accurately reflect national history, values, and practice. Based on Japanese criteria, do students think the 1947 Constitution should have worked for Japan? Have students explain their answers. Discuss how traditional attitudes about authority might have encouraged the Japanese to accept the MacArthur Constitution. What postwar conditions and attitudes in Japan may have helped the Japanese emperor and the people accept a constitution that outlined a political system so foreign to their tradition?

5. Pose the following question to the class: Do you think that the experience in occupied Japan proves that the U.S. Constitution can be transplanted to any other land? Why or why not?

Additional Reading:

Benedict, Ruth, "Post V-J Day Japan," in *The Chrysanthemum and the Sword* (Boston: Houghton Mifflin, 1946).

BRINGING DEMOCRACY TO JAPAN

The Occupation

In July 1945, shortly after Germany had surrendered, the Allied leaders met at Potsdam near Berlin to discuss postwar policies. Among these was the decision to occupy Japan once victory had been achieved in the Pacific. The Allies also agreed that the Occupation should bring about the complete disarmament of Japanese forces and the trial of Japanese war criminals. The Potsdam Agreement further called for democratic reforms in Japan's government. Finally, the Allies declared that the Occupation would end only when all these conditions had been achieved and "a peacefully inclined and responsible government" had been established in Japan.

Immediately after the Japanese announced their decision to surrender, General Douglas MacArthur was appointed the Supreme Commander for the Allied powers to oversee the occupation of Japan. Although he was technically under the authority of an Allied powers commission, MacArthur took his orders from Washington. Rather than establishing an American military government to rule Japan during the occupation, MacArthur decided to employ the existing Japanese government. To do so, he issued various direct orders to Japanese government officials but allowed them to manage the country as long as they followed the Occupation goals developed in Potsdam and Washington, D.C.

MacArthur realized that imposing a new order on the island nation would be a difficult task even with Japanese cooperation. MacArthur believed that foreigners' dictation of radical changes to 80 million resentful people would be impossible.

Having decided to keep the Japanese national legislature (the Diet), the cabinet, and the bureaucracy in place, MacArthur next faced the question of Emperor Hirohito. The Russians and British wanted Emperor Hirohito tried and hanged as a war criminal. MacArthur advised Washington against needlessly angering the Japanese by destroying the sacred symbol of their emperor. MacArthur later wrote in his autobiography: "...I would need at least one million reinforcements should such an action be taken... Military government would have to be instituted throughout all Japan, and guerrilla warfare would probably break out."

At his first meeting with MacArthur, Emperor Hirohito assumed full responsibility for the wartime actions of Japan, knowing that this admission could mean his execution. Eventually the United States and other Allied powers agreed with MacArthur not to treat Emperor Hirohito as a war criminal, with one important condition. On New Year's Day 1946, four months after the Occupation had begun, Emperor Hirohito renounced the belief that he was a divine or godlike being:

> The ties between us and our people have always stood upon mutual trust and affection. They do not depend upon mere legends and myths. They are not predicated on the false conception that the Emperor is divine and that the Japanese people are superior to other races and fated to rule the world.

These words, while shocking to most Japanese, smoothed the way for the more than six years of Occupation that were to come.

Under the U.S. Occupation policy carried out by MacArthur, wartime Prime Minister Tojo and six other leaders were tried and hanged for war crimes. The Japanese military establishment was dismantled and 200,000 military and civilian leaders, including the majority of existing Diet members, were banned from holding any public office. The large industrial monopolies that had fueled the war effort were broken up. Even government support for Shinto, the official Japanese religion, was eliminated.

At the same time, MacArthur promoted the development of democracy in Japan. He suspended Japanese laws restricting political, civil, and religious liberties. He ordered the release of political prisoners and abolished the secret police. He announced a general election to be held in April 1946, only seven months following the surrender. He also called for the Japanese Diet to pass a new election law to provide for free democratic elections, including, for the first time in the history of Japan, the right of women to vote. In addition, under MacArthur's direction, the growth of labor unions was encouraged, large landholdings were broken up, and the education system was reformed.

Surprisingly, these developments were accepted by the Japanese. Of course, Japan was under the control of armed U.S. troops. Still, the ordinary Japanese, seeing death and destruction all around, seemed to conclude that the old way of doing things had failed. The Japanese were disgusted with the military dictatorship that they perceived as having gotten them into a disastrous war. They continued to suffer from the atomic bombings of Hiroshima and Nagasaki. The defeat in the war was a national humiliation, felt by all Japanese. The cumulative experience of World War II made the Japanese emperor receptive to radical changes, and his eventual cooperation enabled the Japanese politicians and people to be receptive to radical changes.

A New Constitution

The Meiji Constitution of 1889 had concentrated actual political power in the hands of a small group of government leaders responsible to the emperor, not the people. From the early 1930s to the end of the war, the military dominated this governing group.

Before 1945, democracy, as Americans know it, had little chance to develop in Japan. No free elections or real political parties existed. Women were denied equal rights. From an American viewpoint, although the Meiji Constitution listed a number of individual liberties, few were meaningful. For example, even though the constitution granted free speech, it did so with the stipulation that it be within the "limits of the law." Thus, the government could and did pass laws to prohibit what it considered "dangerous thoughts." Such restrictions, while offensive to American viewers, were not perceived the same way by the Japanese, who had a long tradition of personal effacement for the national good.

Early in the Occupation, MacArthur saw the need to drastically change the Meiji Constitution. In his autobiography, MacArthur argued:

> We could not simply encourage the growth of democracy. We had to make sure that it grew. Under the old constitution, government flowed downward from the emperor, who held the supreme authority, to those to whom he had delegated power. It was a dictatorship to begin with, a hereditary one, and the people existed to serve it.

MacArthur communicated his views to the leaders of the Japanese government who formed a committee to rewrite the Meiji Constitution. After four months' work, on February 1, 1947, the committee had produced a revision with only minor word changes. For instance, in the rewrite the emperor became "supreme" rather than "sacred."

MacArthur refused to accept the Japanese revision. He gave his own people the task of writing a "model constitution" that would then be used by the Japanese in preparing another revision, which he wanted completed before the Japanese general election scheduled just two months away. He saw the election as a test of whether the Japanese would accept democratic changes in their political system.

The job of writing MacArthur's "model constitution" fell to the Government Section of his General Headquarters. A team of about a dozen army and navy officers (all with special training in government) plus a few civilian experts met secretly to discuss, debate, and write their model for a new Japanese constitution. The team members used a 1939 edition of a book on world constitutions as their main reference. Most of the final wording was drafted by three army officers, all lawyers. This "constitutional convention" lasted six days.

The resulting constitution borrowed from the British system in establishing a cabinet and prime minister who were responsible to the elected Diet. The guarantees of individual rights included wording similar to that found in the U.S. Bill of Rights. One part, guaranteeing equal rights, even went beyond the legal protections U.S. citizens enjoyed at that time. Other provisions sounded not only American but positively New Dealish. For example, workers received the right "to organize and to bargain and act collectively. . . ."

Perhaps the most unique part of the "model constitution" was the "no-war clause." According to Article 9: ". . . The Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes." Article 9 went on to abolish all land, sea, and air military forces. This article was included as the result of a suggestion made by Prime Minister Shidehara to MacArthur. Shidehara believed that this provision would show the rest of the world that Japan never intended to wage aggressive war.

To the Japanese, however, the most radical change from the Meiji Constitution was the removal of the emperor as the source of all government authority. In the "model constitution" the people, acting through the elected Diet, were supreme. MacArthur decided to preserve the position of emperor, but merely as "the symbol of the State and of the unity of the people."

The Japanese government leaders were shocked by the radical changes proposed in the "model constitution." In particular, they found it hard to accept the idea of "rule by the people," which conflicted with the centuries-long Japanese tradition of absolute obedience to the emperor. On February 22, Emperor Hirohito ended the deadlock by commanding that the "model" become the basis for the new constitution of Japan. "Upon these principles," Emperor Hirohito said, "will truly rest the welfare of our people and the rebuilding of Japan."

On March 6, the Japanese cabinet accepted the new constitution. This was followed by statements of approval by Emperor Hirohito and General MacArthur, who later called the document "the most liberal constitution in history."

The constitution was widely publicized and enthusiastically discussed by the Japanese people, especially during the days leading up to the April general election. When the Diet met during the summer of 1946, the newly elected legislators debated and then voted final approval. Japan's new democratic constitution went into effect on May 3, 1947.

Has Japan's democratic constitution been a success? MacArthur himself called it "probably the single most important accomplishment of the Occupation." Others have since criticized MacArthur for unnecessarily forcing the Japanese to renounce their political traditions and accept democracy too rapidly.

In 1952, the American Occupation of Japan ended. The Japanese were again an independent people free to run their country as they wished. Since then, the Japanese have changed or done away with a number of the reforms instituted by MacArthur. One reform remains firmly in place: the "MacArthur Constitution." For 40 years it has never been revised or amended. In the words of Japanese scholar Rinjiro Sodei: "Clearly the constitution has sunk its roots among the people."

8

COMPARING INDIVIDUAL RIGHTS IN JAPAN AND THE UNITED STATES

Introduction: Although the Japanese Constitution of 1947 was modeled after and to a large degree dictated by the United States, this document still contains components that reflect a tempering of the United States-perceived ideal with Japanese tradition. It also contains elements that surpass anything in the U.S. document, particularly in the area of individual rights. In this lesson, students identify similarities and differences between key articles in the 1947 Constitution of Japan pertaining to "Rights and Duties of the People" and the amendments pertaining to individual rights in the U.S. Constitution.

Objectives: Students will be able to:

1. Identify and discuss key individual rights guaranteed in the 1947 Japanese Constitution.

2. Compare and contrast these rights in Japan with similar rights provided for in the U.S. Constitution.

Materials: Amendments to the U.S. Constitution (available in the back of most U.S. history or government textbooks); copies of Handouts J-9 (you may want to copy only Chapter III, although students will need the entire Constitution in Lesson 9) and J-10

Time Required: 1 class period

Procedure:

1. Given what students have learned about the circumstances surrounding the writing and adoption of the Japanese Constitution of 1947, would students expect that document to look a lot like our Constitution? Why or why not? Students will probably answer that the document will resemble our own because it was written largely by MacArthur's staff during the Occupation of Japan following World War II.

Can students hypothesize about which aspects of the Japanese Constitution would still contrast with our own, based on Japanese traditions?

2. Explain that the class will examine several articles of the Japanese "Bill of Rights," which appears as Chapter III of the Constitution and is titled "Rights and Duties of the People." Students will analyze how these rights are similar to and different from rights protected by the U.S. Constitution.

3. Distribute Handout J-9 to all students. Ask students to highlight or note the following articles in Chapter III: 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 26, 27, 34. Explain that these articles address some of the individual rights provided for in the current Japanese Constitution.

4. Have students work in pairs or small groups and use Chapter III of the Japanese Constitution and the amendments to the U.S. Constitution to complete Handout J-10.

5. Discuss student findings in class. For which Japanese rights/duties did students find no counterparts in the U.S. document? (Articles 12, 13, 23, 24, 26, 27) Examine each of these articles individually. How can students account for the inclusion of these rights in the Japanese document and not in our own? (Answers will vary. For example, Article 13 was necessary to initially establish a foundation

for individual rights by acknowledging the Japanese as individuals, a radical departure from tradition. Article 24 seeks to discredit traditional Japanese practices of arranged marriage for the good of the family, and other laws and customs that denied women rights to property, inheritance, and so on. Several other articles outline social and economic rights and duties, such as the right and duty to work. Such rights are not addressed in the U.S. Constitution, which focuses on protections from government, not entitlements vis á vis government.)

6. For which articles did students find counterparts in the U.S. Constitution? (Students should note Article 14—Amendments 13 and 14; Article 15—Amendment 15; Article 19—Amendment 1; Article 20—Amendment 1; Article 21—Amendment 1; and Article 34—Amendment 5.)

Discuss differences in the wording of the provisions in the two constitutions. Which one goes into more detail? Why might this be so? What might differences of wording or detail imply about the exercise of these rights in the two countries? For example, would Japan's unfamiliarity with individual rights require a more detailed description or explanation of these rights? Look at specific provisions of the Japanese rights (e.g., specific discussion of freedom of religion in Article 19, reference to peers and peerage in Article 14). Which Japanese traditions do each of these specific statements address?

7. From what students know about Japanese social and political history, which of the articles addressing individual rights guaranteed by the 1947 Constitution would seem most foreign or hard to accept for the Japanese? Have students support their answers. Some possible answers include:

- Freedom of religion—for almost 2,000 years Japan had a national religion, Shintoism.
- Establishment of the Japanese people as individuals and all the rights related to freedom of speech and press.
- All rights related to equality under the law and equality of men and women—Japan was traditionally a hierarchical society.

THE CONSTITUTION OF JAPAN, 1947

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances and rescripts in conflict herewith.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

CHAPTER I. THE EMPEROR

ARTICLE 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

ARTICLE 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

ARTICLE 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

ARTICLE 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

ARTICLE 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

ARTICLE 6. The Emperor shall appoint the Prime Minister as designated by the Diet.

The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

ARTICLE 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Facts About Japan: The Constitution of Japan. Tokyo: International Society for Educational Information, Inc., n.d.

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general election of members of the Diet.

Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Attestation of instruments of ratification and other diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

ARTICLE 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

CHAPTER II. RENUNCIATION OF WAR

ARTICLE 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE

ARTICLE 10. The conditions necessary for being a Japanese national shall be determined by law.

ARTICLE 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

ARTICLE 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

ARTICLE 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

ARTICLE 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

Peers and peerage shall not be recognized.

No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

ARTICLE 15. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any group thereof.

Universal adult suffrage is guaranteed with regard to the election of public officials.

In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

ARTICLE 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

ARTICLE 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

ARTICLE 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

ARTICLE 19. Freedom of thought and conscience shall not be violated.

ARTICLE 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State and its organs shall refrain from religious education or any other religious activity.

ARTICLE 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

ARTICLE 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

ARTICLE 23. Academic freedom is guaranteed.

ARTICLE 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

ARTICLE 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

ARTICLE 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

ARTICLE 27. All people shall have the right and the obligation to work.

Standards for wages, hours, rest and other working conditions shall be fixed by law.

Children shall not be exploited.

ARTICLE 28. The right of workers to organize and to bargain and act collectively is guaranteed.

ARTICLE 29. The right to own or to hold property is inviolable.

Property rights shall be defined by law, in conformity with the public welfare.

Private property may be taken for public use upon just compensation therefor.

ARTICLE 30. The people shall be liable to taxation as provided by law.

ARTICLE 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

ARTICLE 32. No person shall be denied the right of access to the courts.

ARTICLE 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

ARTICLE 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

ARTICLE 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

ARTICLE 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

ARTICLE 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

ARTICLE 38. No person shall be compelled to testify against himself.

Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

ARTICLE 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

ARTICLE 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

CHAPTER IV. THE DIET

ARTICLE 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

ARTICLE 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

ARTICLE 43. Both Houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

ARTICLE 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

ARTICLE 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

ARTICLE 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

ARTICLE 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

ARTICLE 48 No person shall be permitted to be a member of both Houses simultaneously.

ARTICLE 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

ARTICLE 50. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

ARTICLE 51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

ARTICLE 52. An ordinary session of the Diet shall be convoked once per year.

ARTICLE 53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation.

ARTICLE 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election.

When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

ARTICLE 55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

ARTICLE 56. Business cannot be transacted in either House unless one-third or more of total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

ARTICLE 57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

ARTICLE 58. Each House shall select its own president and other officials.

Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

ARTICLE 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councillors.

ARTICLE 60. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

ARTICLE 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

ARTICLE 62. Each House may conduct investigations in relation to govermment, and may demand the presence and testimony of witnesses, and the production of records.

ARTICLE 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

ARTICLE 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

CHAPTER V. THE CABINET

ARTICLE 65. Executive power shall be vested in the Cabinet.

ARTICLE 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.

The Prime Minister and other Ministers of State must be civilians.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

ARTICLE 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

ARTICLE 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet.

The Prime Minister may remove the Ministers of State as he chooses.

ARTICLE 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

ARTICLE 70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.

ARTICLE 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

ARTICLE 72. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.

ARTICLE 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:

Administer the law faithfully; conduct affairs of state.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

Administer the civil service, in accordance with standards established by law.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

ARTICLE 74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

ARTICLE 75. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

CHAPTER VI. JUDICIARY

ARTICLE 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

ARTICLE 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

ARTICLE 78. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

ARTICLE 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

Matters pertaining to review shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

ARTICLE 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

ARTICLE 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

ARTICLE 82. Trials shall be conducted and judgment declared publicly.

Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

CHAPTER VII. FINANCE

ARTICLE 83. The power to administer national finances shall be exercised as the Diet shall determine.

ARTICLE 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

ARTICLE 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

ARTICLE 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

ARTICLE 87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

ARTICLE 88. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

ARTICLE 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

ARTICLE 90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.

The organization and competency of the Board of Audit shall be determined by law.

ARTICLE 91. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

CHAPTER VIII. LOCAL SELF-GOVERNMENT

ARTICLE 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

ARTICLE 93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

ARTICLE 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

ARTICLE 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER IX. AMENDMENTS

ARTICLE 96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

CHAPTER X. SUPREME LAW

ARTICLE 97. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.

ARTICLE 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of govermment, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

ARTICLE 99. The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

CHAPTER XI. SUPPLEMENTARY PROVISIONS

ARTICLE 100. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

ARTICLE 101. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councillors shall be constituted.

ARTICLE 102. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

ARTICLE 103. The Ministers of State, members of the House of Representatives, and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution, they shall forfeit their positions as a matter of course.

Date of Promulgation: November 3, 1946
Date of Enforcement: May 3, 1947.

COMPARING INDIVIDUAL RIGHTS IN JAPAN AND THE UNITED STATES

Complete the chart below by first analyzing the provisions in the Japanese Constitution's Rights and Duties of the People and then comparing these rights to rights provided in the amendments to the U.S. Constitution.

Selected Japanese Rights	What Article Guarantees	U.S. Counterpart—No or Yes? If Yes, Amendment Number	If Yes, Differences
Article 12			
Article 13			
Article 14			
Article 15			
Article 19			
Article 20			
Article 21			
Article 22			
Article 23			

Selected Japanese Rights	What Article Guarantees	U.S. Counterpart—No or Yes? If Yes, Amendment Number	If Yes, Differences
Article 24			
Article 26			
Article 27			
Article 34			

9

THE TUG OF WAR BETWEEN LAW AND CUSTOM: THE FUKUOKA PATRICIDE CASE

Introduction: In this case study activity, students consider the tension created when the new political values and principles of the 1947 Constitution were superimposed on often-contradictory traditional values, customs, and laws. Students consider an actual Japanese Supreme Court case involving the sentencing of a son convicted of killing his father. The case was considered by the Japanese Supreme Court in 1950, just three years after the new constitution took effect. The case emphasizes the conflict between the traditional concept of filial piety, and laws that had grown up to protect this concept, and the principles of democracy and individual rights granted by the 1947 Constitution.

Objectives: Students will be able to:

1. Describe the conflict or tension between long-standing Japanese traditions and new legal requirements of the 1947 Constitution.

2. Analyze a legal case exemplifying this conflict.

3. Appreciate different rates of change between law and practice.

Materials: Copies of Handouts J-9 (Lesson 8) and J-11 through J-13

Time Required: 1-2 class periods

Procedure:

1. Review the context in which Japan adopted a new constitution in 1947. Some questions to consider in this review discussion include the following:

- Who had been responsible for the writing of this constitution and why?
- How was the constitution a departure from Japanese tradition? What aspects of Japanese society and politics did the constitution seek to change and with what did it plan to replace them?
- In what ways, if any, did the new constitution seek to temper new ideas with traditions? To what extent do students think the constitution was committed to blending old and new? To what extent was it successful in doing so?
- Have students cite examples from the constitution that reflect a blending of old and new. For example, the Emperor was retained, but he was no longer sacred or the source of sovereignty; the constitution articulated rights of the people, but in Article 12 it established an ultimate goal of balancing individual rights with public welfare.

2. Remind students of the premises they used to analyze the Meiji Constitution in Lesson 4; that is, that constitutions tend to work if they accurately reflect national history, values, and practices. Based on these criteria, do students think the 1947 Constitution should have worked for Japan? Have students explain their answers. What postwar conditions and attitudes in Japan may have helped the Japanese accept a constitution that outlined a political system so foreign to their tradition? (The humiliation of defeat, disillusionment with the military government, respect for MacArthur, MacArthur's respect for the importance of the emperor, and general recognition of the need for change. See Lesson 5.)

3. Present to students the idea that the 1947 Constitution required the Japanese to drastically change their thinking and actions on many issues. Because of this, the constitution offers an intriguing case study in what has been called the "tug of war" between law and custom. Present, as a short lecture, information on this "tug of war" provided in the **Teacher Background Notes**.

4. The Fukuoka patricide case, which illustrates the "tug of war" between law and custom under the 1947 Constitution, can be conducted as a mock Supreme Court hearing or as a case study analysis. Conduct the activity as a mock hearing by the following means:

a. Divide the class into three groups, explaining that students will work in these groups to present and decide an actual case involving the principle of equality under the law—a new concept introduced to the Japanese in the 1947 Constitution. The case came before the Japanese Supreme Court in 1950. Assign group 1 the role of the defense, group 2 the role of the prosecution, and group 3 the role of the Supreme Court.

b. Distribute Handouts J-11 and J-12 to students in all three groups. Allow students time to read the entire case presented in Handout J-11. As a class, identify the facts, issues, and arguments presented in the case description, having students complete Handout J-12 as the class proceeds through the discussion. Make sure that all students understand the issues in the case. The main issue is whether patricide is to be punished with a more serious sentence than other wrongful deaths. The critical underlying issues are whether such differential sentences undermine the principle of equality under the law and, on another hand, whether the Constitution is to function as the highest law of the land.

Before moving on, ask students if they can explain why this case represents a "tug of war" between law and custom. What law is in conflict with what custom?

c. Assign group 1 and group 2 to study their positions more carefully and to use the brief arguments presented in the case description as a basis from which to develop full arguments that they will present to the Supreme Court in support of their position at the mock hearing. Group 3 should examine both sides more thoroughly. Each group may want to refer to notes and materials from previous units and to additional background material on Japanese culture in their texts or other sources. Library research time may be useful.

d. To prepare for the mock hearing, group 1 and group 2 should each pick two spokespersons, each of whom will be responsible for presenting one or two of the main arguments in defense of their respective group's position. Remind the groups that their presentations should expand upon and explain the arguments briefly presented in the case description, not just repeat them. Group 3 should select four or five students to act as Supreme Court judges to hear the case. Together, group 3 should create four to five questions to ask the defense and prosecution about their positions. Each of the judges should take responsibility for one question during the hearing.

e. Conduct the hearing, with the prosecution stating its case first, followed by questions from the judges, the case for the defense, and final questions from the judges.

f. Allow group 3 five to ten minutes to meet and decide the case. Remind group 3 to be mindful of its role as Japanese judges and to try and consider the case the way they think Japanese judges of the time would. The judges should then report their decision and supporting reasons to the class.

g. Distribute Handout J-13, the actual resolution and majority opinion on the case to the class. Because the language of this actual decision is somewhat complicated, you may choose to substitute Handout J-13a instead. How did the class decision compare to the real decision? Were students surprised by the actual decision? Why or why not? What were the key issues in the judges' decision? Do students think the timing of the case, just three years after the constitution was adopted, was relevant in the decision? How do students think the case might be decided today, some 40 years after the adoption of the constitution?

5. To conduct the activity as a case study analysis, follow the following steps:

a. Distribute Handouts J-11 and J-12. Invite students to work alone or in small groups of two to three to read and analyze the case and complete Handout J-12. Discuss the case in class, focusing discussion on student understanding of the facts, issues, and arguments (see Procedure 4b).

b. Return students to their small groups to reach a decision on the case. How do they think the Supreme Court would have decided the case and why? Invite several groups to report their decision and reasoning to the class.

c. Distribute Handout J-13 to each student and discuss the actual decision as a group. (See Procedure 4g.)

Teacher Background Notes:

In general, laws are passed to uphold important values in a society. In this case, laws reflect what the people in a society already believe or do. For example, laws requiring people to reach a certain age before they can marry reflect generally accepted norms in our country. Laws against actions such as theft or murder also reflect our values. But in some cases, nations pass laws to try and force people to change behavior. In this case, laws do not reflect already-held values but ideals towards which to work. A good example of such a law in the United States was the amendment to the U.S. Constitution prohibiting the sale or drinking of alcoholic beverages. Because this law was at odds with social practice and attitudes, it was widely ignored in the nation and was eventually repealed. Sometimes such laws fail. In other instances, the laws continue to be enforced until, gradually, social change takes place and attitudes and actions reflect the law.

Through the 1947 Constitution and especially that constitution's guarantee of individual rights, the Japanese were directed towards major political and social changes. The question arises as to how such law has been translated into actual practice.

The transition from law on paper to law in practice can be a difficult and uncertain process. Japan, like all societies, has a variety of religious and social traditions and customs that impinge upon formal laws, shape and modify them, and influence how they will be interpreted, followed, and enforced. Often, age-old practices, reinforced by traditional values, overshadow or outlive new formal laws.

The position of the individual as well as certain segments of the population such as women have undergone tremendous change in Japan since World War II. The laws reflect that change. Social attitudes and practice, however, have often not changed as quickly or easily as laws. People often continue tradition and custom long after laws require something else. The Fukuoka Patricide case exemplifies the tension—or tug of war—between law and practice in the early days of Japan's new constitution.

THE FUKUOKA PATRICIDE CASE

The Case. On October 31, 1949, Yoshioko Suzuki* and his father got into an argument. During the course of the fight, Yoshioko severely beat his father around the head. The father died the following day, and Yoshioko Suzuki was brought to trial on the charge of inflicting on his father bodily injury resulting in death.

Decision and Sentencing. The court found Suzuki guilty. However, once the verdict had been reached, the case centered on the sentence to be applied. The prosecution pressed for a severe sentence while the defense pressed for a light sentence.

The *prosecution* based its arguments for a harsh penalty on the Japanese criminal code, which imposes a more severe penalty on those guilty of causing the death of a lineal ascendant (father, grandfather) than on others. The prosecution cited Article 205 of the Criminal Code which states:

> **A person who inflicts a bodily injury on another and thereby causes his death shall be punished with imprisonment at forced labor for a fixed term of not less than two years. When committed against a lineal ascendant of the offender, or his or her spouse, imprisonment at forced labor for life or for not less than three years shall be imposed.**

The *defense* pressed for a light sentence. The defense rested its case in the sentencing on the principle of equality before the law, which had just been established in the newly-adopted Constitution of 1947. According to the defense, the Criminal Code provision enforcing a stricter punishment for family deaths violated the principle of equality before the law by creating a special class of criminals—those killing family members. The defense cited Section III, the Rights and Duties of Citizens, Article 14, of the Constitution, which states:

> **All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin.**

The Sentence. The court judged in favor of the defense and imposed a relatively light, three-year deferred sentence. The court based its sentence on the constitutional provision, ruling that the section of the Criminal Code proscribing severe punishment for death of a lineal ascendant was unconstitutional and therefore null and void.

The Appeal. The *prosecutor* in the case appealed to the Supreme Court for an overturning of the original light sentence and an imposition of a harsher sentence.

The Prosecutor's Arguments on Appeal. In the Supreme Court hearing, the *prosecution* rested its case on the the traditional Japanese values and principles which underlay the Criminal Code's differentiation between wrongful death of a family member vs. wrongful death of others. The Criminal Code article was based on the fundamental Japanese value of filial piety—respect for family, especially family elders and ancestors—which had formed the cornerstone of Japanese familial and all social relations for centuries. Such a fundamental value could not be brushed aside without seriously damaging the fabric of society. The Criminal Code was also based on related values of family loyalty and the essential morality that should prevail in family relations—the moral duties of a child to his parents, spouse to spouse, and so on. The Criminal Code, in making such differentiations in types of crime, was encouraging the system to treat crimes and criminals subjectively and individually, and to consider the real impact of the crime on the social structure and important social values. The importance of human relationships, which bind society together, could be lost in a totally equal application of law such as prescribed in the Constitution.

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*fictional name

The Defense Attorney's Arguments on Appeal. In trying to uphold the original light sentence given its client for the death of his father, the defense rested its arguments before the Supreme Court on the letter and spirit of the new Constitution. The guarantee of equality under the law provided in Article 14 of the Constitution was a new but precious idea—a fundamental principle of democracy to which the Japanese nation had committed itself. In its prescription of different sentences for the same crime, the Criminal Code was clearly treating people unequally. Such distinctions in sentencing amounted to discrimination because of one's social status (e.g., as a child of the victim).

The defense further argued that the Constitution was to function as the highest law of land. The Supreme Court's overturning of the original sentence would be the equivalent of saying that the Constitution was not the supreme law of the land. If laws were held as more absolute guidelines than the provisions of the Constitution, the Constitution would become valueless.

BRIEFING A LEGAL CASE

In briefing a legal case, answer the questions below:

Case name ______________________________

Originator of case ______________________________

Court giving ruling opinion ______________________________

Decision date ______________________________

Facts—Who did what to whom, where, when, under what circumstances?

____

____

Legal issues or principles in initial trial ______________________________

Legal arguments of each side ______________________________

____

____

Action asked by plaintiff (or state) ______________________________

____

____

Verdict of lower court ______________________________

Grounds for appeal ______________________________

Majority decision of court hearing final appeal ______________________________

Reasoning on main issue or legal principle ______________________________

____

Dissenting opinion and reasoning ______________________________

____

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Major significance of case ____________________

What legal standard on the issue was established/settled/developed?

____

Were precedents cited continued/changed/overturned? ____________________

____

What was the significance of the decision for the particular person or persons in the case? __________

____

FORMAL JUDGMENT OF THE SUPREME COURT OF JAPAN RE: FUKUOKA CASE

The original judgment shall be quashed. The case shall be returned to the Fukuoka District Court.

REASONS: Regarding the reasons for appeal by the prosecution: The appeal by the prosecution states that the original decision recognized that the accused inflicted on his lineal ascendant an injury resulting in death, yet failed to apply paragraph 2 of Article 205 of the Criminal Code and disposed of the case under paragraph 1 of the same article on the grounds that paragraph 2 violates the spirit of Article 14 of the Constitution. The argument for appeal contends that this decision is contrary to law and should be quashed, because it is based on a misunderstanding of the intent of the constitutional provision and because the penal provision that should have been applied was not applied.

The original judgment states in its "Reasons":

> The provision of Article 205, paragraph 2, of the Criminal Code, viewed in the light of its origin, fondly preserved under the name of a so-called beautiful custom a matter which derived from the idea of severe punishment for patricide, which was regarded as the equivalent of the murder of one's lord because it was considered to be treachery against a parent who, in respect to the child, was viewed as the family head or as a protector or as a figure of authority. Thus, in the final analysis, this provision, derived as it is from quite feudalistic, antidemocratic, and antilibertarian ideas, runs counter to the grand spirit of the Constitution, which stresses the legal equality of all human beings.

In stating this, the original judgment holds that the said provision is contrary to the egalitarian democratic spirit of Article 14 of the Constitution and is thus unconstitutional.

Article 14 of the Constitution enunciates the principle of equality under the law for the people and provides that there be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin; this states the equality for all men of the value of human personality. Therefore, it is none other than an expression of the great principle that there be neither special rights nor the infliction of especially disadvantageous treatment on the grounds of differences in race, religion, sex, occupation, social status, and so forth. That slavery and special rights of peers are no longer recognized and that under the new Civil Code the incompetency of the wife and the special privileged position of the head of the house are abolished are also due to this principle. But this does not mean that the law is prevented from laying down appropriate, concrete provisions as required by morality, justice, or the specific purposes to be served by the law—taking into consideration within the scope of the principle of equality of the people such circumstances as age, natural qualities, occupation, or special relations with others. The reason for the more severe punishment of murder or injury resulting in death when committed against lineal ascendants as stipulated in the Criminal Code compared with ordinary cases of the same crimes is that the Code attributes special importance to the moral duties of the child toward his parents; the provision is merely a concrete legal provision, based on the requirements of morality.

The original decision points out that such an attribution of importance to the child's moral duties to his parents arose from feudalistic, antidemocratic ideas and that it is allowed to exist only in a familial society based on ideas such as "the unity of loyalty and filial piety" and "ancestor worship"; but morality, controlling such relations as those between husband and wife, parent and child, or brother and sister is the great fountainhead of human ethics, a universal moral principle recognized by all humankind without regard to past or present or East and West. In other words, it must be said that this principle belongs to what in theory is called natural law. Therefore, with the exception of England and the

United States, which are common law countries, we can find many examples of legislation providing more severe punishment for crimes against lineal ascendants than in ordinary cases. Whereas the original decision found that a morality that attaches special importance to the moral duties of children toward parents is feudalistic and antidemocratic, we find that this is a confusion of the natural relations between parents and children with the artificial social family system centering around the head of the house, which is negated under the new Constitution. In short, it [the original decision] indiscriminately rejects existing beautiful customs for the reason that they are feudalistic and antidemocratic and that it makes the same mistake as the present trend of the world, which falls into the evil of "throwing out the baby with the bath water."

Furthermore, by our interpretation of Article 14, paragraph 1, of the Constitution, the relations between parents and children do not fit under any of the categories, such as social status, and so forth, which are mentioned therein as reasons for discriminatory treatment. Also, the provision of the said article and paragraph that states that all of the people must in principle be treated equally in their political, economic, and social relations considers their position in regard to basic rights and duties from their place as subjects of those rights. It does not prohibit treatment of the people that varies according to their respective differences as objects in the several legal relationships applying to them. The original decision states that applying a more severe penalty when the victim is a direct lineal ascendant is tantamount to establishing, in regard to both the protection of human life and to punishment, a distinction among the people between those who are "special" and those who are "ordinary" and that, therefore, giving special protection to lineal ascendants as compared with ordinary people results in an inequality under law.

Such being the case, the provisions of Article 205, paragraph 2, of the Criminal Code have definitely remained valid from the time the new Constitution came into effect to today; therefore, the original judgment, which rejected the application of this paragraph in spite of the factual finding that the defendant killed his lineal ascendant and disposed of this case under paragraph 1, of the Constitution and failed to apply the penal provisions that should have been applied. Thus, the appeal is well founded.

Accordingly, this Court renders judgment as shown in the formal judgment in accordance with Articles 405, 410, and the principal clause of Article 413 of the Code of Criminal Procedure.

JUDGMENT OF THE SUPREME COURT OF JAPAN RE: FUKUOKA CASE: A SUMMARY

The Supreme Court of Japan voted in favor of the appeal by the case prosecutor; that is, it voted to quash, or reject, the original judgment of the Fukuoka District Court, which had stated that giving the defendant a harsh sentence because he had killed his father was unconstitutional because it violated the principle of equality under the law. The Supreme Court then sent the case back to the Fukuoka District Court.

The Supreme Court reasoning had three parts, as follows:

1. The Japanese Criminal Code (Section 205) called for a more severe penalty for patricide—killing of one's father—than other murders. The Fukuoka District Court refused to apply such a penalty, saying that to do so would be to recognize an inequality under the law—that people who kill their parents are of a different status of crime than people who kill unrelated people. Such a legal inequality was unconstitutional under Article 14 of the new Constitution. The Fukuoka District Court ruling made Section 205 of the Criminal Code unconstitutional and void.

2. The Fukuoka District Court reasoned that applying a more severe penalty for patricide than other murders reflected the unequal, hierarchical society of feudal Tokugawa Japan and was therefore inherently undemocratic.

3. The Supreme Court rejected the Fukuoka District Court ruling, saying that the district court misunderstood the meaning of Article 14 of the Constitution. According to the Supreme Court, the principle of equality under the law set forth in Article 14 means that there can be no special rights or disadvantageous treatment on the grounds of *race, religion, sex, occupation*, or *social status*. But the relationship between parent and child is not a social status, nor does it fall into any of the other categories—race, religion, etc. So it does not fall under the jurisdiction of Article 14.

Moreover, the Supreme Court reasoned that the principle behind the more severe penalty for patricide was not recognition of different statuses but respect for an important moral code and cultural value system which recognized the special moral duties of a child to parent. Loyalty, love, and respect among family members are time-honored and fundamental Japanese values and are, in fact, universal human values. Even in its broadest interpretation, Article 14 does not mean that the law can be prevented from laying down provisions (including sentences for crimes) appropriate to morality. Imposing a more severe penalty for patricide—killing one's father—falls into this category of law appropriate to a national standard of morality.

In summing up its decision, the Supreme Court stated that when the Fukuoka District Court rejected fundamental Japanese and human values related to the family in its effort to embrace the new Constitution, it "threw out the baby with the bath water."

10

A HALF STEP BEHIND: THE EVOLUTION OF WOMEN'S RIGHTS IN JAPAN

Introduction: The status of women has changed dramatically over the course of Japanese history. During most of Japanese history, laws regarding women's rights did not conflict with actual social practice. However, with the Allied Occupation following World War II, significant changes were made in the Japanese Civil Code and Constitution to radically change the legal status of women. As in many cases of laws passed to initiate social change, actual attitudes and practices change much more gradually than the letter of the law. In this lesson, students complete a reading and chart to understand the evolution of traditional attitudes and practices related to women's roles in Japanese culture. They then view a video to analyze contemporary changes in women's status and roles through a case study of one young Japanese woman.

Objectives: Students will be able to:

1. Identify social attitudes and values that defined the status and role of women in different periods in Japanese history.

2. Discuss events that created a marked conflict between social custom and practice regarding women and law in post-World War II Japan.

3. Analyze political and social ideals of the role of women mandated in the Japanese Constitution of 1947.

4. Evaluate changes in the roles and status of women since the adoption of the Japanese Constitution of 1947.

Materials: Copies of Handouts J-9 and J-14 through J-17; video, *The Story of Noriko.* The video is available on loan from SSEC (303/492-8154) or for purchase from TeleJapan USA, 964 Third Avenue, New York, NY 10155 (212/980-5333) or the Center for Teaching International Relations, 2201 S. Gaylord, Denver, CO 80208 (303/871-2164).

Time Required: 1-2 class periods

Procedure:

1. Explore student impressions of the status and roles of Japanese women by having class members complete several open-ended statements. Ask each student to finish the five sentences listed below on a separate sheet of paper. Ask volunteers to share their impressions with the class. Is there a general uniform image of Japanese women? On what sources of information do students base their impressions? Have students keep their responses in mind as they proceed through this lesson.

- When someone mentions Japanese women, the first picture in my mind is …
- If I went to Japan, I would expect to see a Japanese woman doing …
- The ways in which Japanese and American women are alike are …
- The ways in which Japanese and American women are different are …
- Most of my impressions of Japanese women come from …

2. Review with students the notion of the "tug of war" between custom and law illustrated in the Fukuoka patricide case study. Explain that just as the principle of equality before the law was new, superimposed by the American-modeled constitution on a conflicting Japanese tradition of hierarchical social roles and special privileges, the notion of women's rights was also foreign to Japanese experience.

Explain that since World War II and the Allied Occupation, a number of Japanese laws have been enacted with the goal of improving the social, economic, and political status of women, to make them equal with men. In Japan, legal changes regarding the status of women have come first, establishing abstract ideals regarding their equality with men. Most notably, provisions in the "Rights and Duties of the People" of the 1947 Constitution and the Equal Opportunity Employment Act of 1986 guarantee women equal social, political, and economic rights.

Molded by centuries of tradition, attitudes and practice regarding women in Japan have lagged behind, but have been encouraged by, the legal changes. While social change has gradually taken place, the process of invoking the constitution to legally demand specific civil rights has just recently begun.

Following a reading activity, students will view and discuss a video to consider the extent to which attitudes and practices regarding women are deviating from tradition and towards the ideals established in the 1947 Constitution.

3. Distribute Handouts J-14 and J-15 to all students. Divide the class into four groups, assigning each group to complete the section of the reading corresponding to its number. Each group will complete the chart on values/practice and laws corresponding to its number. Groups may also be asked to draw a picture they think illustrates the social status and legal rights of women during the specific period of Japanese history they studied.

4. Have each group present its picture and explain the status of women during its historical period. Each group should be able to explain the general attitudes and practices regarding women, the relevant laws, and whether these two categories synchronized with each other; that is, did laws correspond with actual attitudes and practices? Students should also be able to explain the philosophical roots, if any, of the status of women during their historical period.

5. Distribute Handout J-9, J-16, and J-17 to all students. For homework, students should complete Handout J-17 by identifying the articles in Handout J-9 or Handout J-16 which sought to legally change traditional practices regarding women.

6. Review student charts in class. Explain that each category of the homework chart can be seen as a continuum of change concerning women in Japan. Illustrate this concept on the chalkboard as shown below.

|____|

Women denied public education — Equal education

|____|

Women not allowed to inherit property — Equal property and inheritance right

7. Introduce the video, *The Story of Noriko,* as a case study in the social and economic changes women in Japan are experiencing today. Explain that Noriko is a young woman who in many ways embraces the ideals of women's rights set forth in the law, but who is also limited by traditional values and practices she cannot or will not reject. As students watch the video, they should consider each one of the continua illustrated on the board. In the video, students should identify examples of Noriko or other women dealing with the "tug of war" between the traditional status and a constitutionally guaranteed ideal. Have students make note of each example they find.

8. Debrief the video by referring to each continuum on the board and asking for students' examples as seen in the video. For each example identified, ask where students would put that case on the continuum; that is, do the actions represent a closer adherence to tradition or to the spirit of the law?

Some video examples students might cite follow. If students have trouble identifying situations from the video, these examples might be presented to them. Students could then place them on the proper continuum.

- Noriko has attended college and her sister now attends college—reflecting the constitutional ideal of equal educational opportunity for men and women.
- Noriko is searching for a challenging professional job—a goal that embraces the constitutional right to work (Article 27) and the ideal of the Equal Opportunity Employment Act.
- Noriko has a hard time finding any job other than that of an office lady (or O.L.) who performs menial tasks in a corporation—a situation that reflects the endurance of traditional attitudes and economic opportunities.
- Noriko's parents pressure her to meet a potential husband in a formal omiai (go-between) ceremony; Noriko's parents and the young man's parents are an important part of the omiai ceremony—both of which reflect traditional attitudes and customs concerning marriage as a family union.
- Noriko consents to the omiai but rejects the young man—a decision that reflects the freedoms granted by Article 24 of the 1947 Constitution.
- Noriko has a boyfriend that her parents have never met—reflecting the ideal of individual choice of spouse set forth in Article 24 of the Constitution.
- Noriko's boyfriend in Tokyo thinks that women should not work after marriage—an attitude that reflects centuries-old values about the role of women as wives and mothers—but Noriko wants to work after she is married.
- FLASH is a company owned and operated by women—a fact that reflects the ideals of the Equal Opportunity Employment Act and Constitutional Article 14, equality under the law.
- Noriko's mentor at FLASH has trouble balancing her career and family—a reflection of the tension between traditional values and pressures on women as wives and mothers on one hand, and as professionals taking modern economic opportunities on the other hand.

9. To debrief the activity, ask students to comment on whether they think the status of women has genuinely changed in Japan since World War II. How do advances in Japan compare to those in the United States? How long have women in the United States been working on similar issues? How do the rights guaranteed women in the constitution and in civil law compare in the two countries? How do attitudes and practices compare? Given the time frame of change in the United States and Japan, how would students evaluate the progress that Japanese women have made?

Handout J-17 Answer Key:

Traditional Practice Regarding Women	Article #	Description
Women's roles confined to those of wife and mother	13,14, 25; Equal Opportunity Law	People respected as individuals, no economic, political, or social discrimination by sex; right to minimum standards of living
Women took menial jobs in times of economic necessity	14, 27; Equal Opportunity Law	No discrimination in economic relations; the right and duty to work
Women not allowed to take part in politics	13,14,15	People respected as individuals, no discrimination in political relations because of sex; universal adult suffrage
Women's marriage partners chosen by their families for the good of the family	24	Marriage by mutual consent, equal rights of husband and wife
Women not allowed to inherit or own property	24	Equality of sexes in property rights and inheritance
Women denied education	26	Equal education

Extension/Enrichment:

To extend the activity, have students conduct library research on developments regarding women's rights in Japan in the past two years. What advances have been made in terms of their social, economic, and political statuses? If available, exchange students, business people, and other Japanese living in the community might be invited to talk on the issue of changing roles of men and women in Japan.

Additional Reading:

Wojtan, Linda S., "Women and the Law: The Tug of War Between Law and Custom," in *Update on Law-Related Education*, Fall 1981, pp. 14-16. This article offers valuable insight into the costs and benefits Japanese women perceive in obtaining equal social and economic status with men.

THE STATUS OF WOMEN IN JAPANESE HISTORY

1. In the course of Japan's history, the status of women has deteriorated. According to Japan's creation myth, the Imperial family is directly descended from Amaterasu, the sun goddess. This myth bestowed on women a high status. From the 2nd through 8th centuries A.D., a number of females ruled Japan. According to Japan expert Edwin Reischauer, "women had great freedom in the Heian period (794-1192 A.D.) and dominated much of the nation's literature during that time."[1]

2. However, a combination of philosophical influence and social and economic factors precipitated the decline in the status of women in the 12th and 13th centuries. Confucian philosophy, adopted by the Japanese from China, ranked all people in hierarchical order and relegated women to a position inferior to men. Women's role and status was summed up in the Confucian dictum of "Triple Obedience": in youth, females obey their fathers; in marriage, their husbands; and in old age, their sons.

In Japan's feudal period, which began around 1200 A.D., the samurai warrior came to embody the ideal human being in Japanese society. Accordingly, women became less influential and their freedom was restricted. Women lost previously-enjoyed rights of inheritance and property ownership. The role for women evolved into one of subservience, devotion, and loyalty to their masters.

During later feudal times, the Tokugawa Period (1600-1867), a woman's role was primarily viewed as that of wife and mother. Given the importance of family in Japan and women's prescribed role in the family, marriage was viewed as the union of families rather than of individuals. Women's personal preferences, and in many cases those of men, were totally subjugated to family goals, status, and reputation in identifying suitable marriage partners. While their social and economic rights were significantly curtailed during this period, women did wield significant power within their households.

3. In the period following the Meiji Restoration (1868), Japan industrialized. Women assumed a paid economic role as they began to take jobs in factories. However, while industrialization made women more visible within the society and economy, they enjoyed little enhancement in status. In fact, legally, their rights were curtailed. In a series of laws enacted in 1890, women were denied membership in political parties and even entrance into the Parliament building. Given their social role as wives and mothers, public education was not considered necessary for women. Individual women and groups protested discriminatory Japanese customs and laws in the late 1800s and early 1900s. However, few changes were realized.

The military dictatorship, which came to power in the 1930s, continued to support the Confucian tradition of women as wives and mothers. Women continued to enjoy few economic or political rights, even though they filled important, though menial, positions in agriculture and industry, in addition to their duties at home.

4. Following World War II, the Japanese Constitution and Civil Code were revised under the direction of American Occupation forces. With these revisions, Japanese women gained the right to vote, to obtain equal public education, to attend public universities, to inherit and hold property, and to enter into marriage only by mutual consent. Today their social and economic status continues to change, although very gradually.

Most contemporary Japanese women continue to see their roles primarily as those of wives and mothers. However, women enjoy a great deal of freedom, influence, and respect for their family related roles, generally controlling the family finances and directing the upbringing and education of their children.

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[1] Edwin Reischauer, *The Japanese* (Cambridge: Belknap Press of Harvard University Press, 1981, p. 205.

Increasingly, Japanese women are seeking employment outside the home, now comprising approximately 40 percent of the Japanese work force. However, according to a 1985 study by Nobuko Hashimoto,[2] Japanese women generally stay in the work force only a few years. Young women enter the economic force following high school or college, but typically stop working by the time they marry or when they have children. Middle-aged women, whose children are grown or in school, also join the work force, often in part-time jobs for just a few years.[3]

In general, most companies expect women to leave employment after a few years. Although women tend to be well-educated, they are most commonly employed in low-level positions offering low pay and little or no chance of advancement. Thus, many women work as store clerks and "office ladies" ("OLs"), whose duties include clerical and secretarial work as well as hostessing. A long-standing system of corporate hiring, called "Dual Track Employment," has effectively closed many professional and career-track jobs to women. However, inroads are beginning to be made. Women are beginning to enter fields that were previously closed to them and to find positions in new industries such as fashion, communication, finance, and banking.

Along with this, in 1985, the Japanese Parliament passed an Equal Opportunity Employment Law, which went into effect in April 1986. The passage of this law was highly controversial because it only urges employers to "make efforts" to treat male and female employees equally with regard to recruitment, engagement, placement, and promotion. It provides no penalties for noncompliance. Over the past five years, some evidence indicates that the law is beginning to have an effect, but it is too early to know whether it will eventually bring about equality in the workplace. Certainly the status of working women in Japan is in a state of change.

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[2] Nobu Hashimoto, "Japanese Women in a Male Society," *The Christian Science Monitor*, 10, January 1985, pp. 16-17.
[3] Ibid.

LAW AND THE STATUS OF JAPANESE WOMEN

The chart below is designed to identify and compare laws regarding women with actual attitudes and practices in different periods in Japanese history. Refer to the reading on "The Status of Women In Japanese History" to complete the chart.

Historical Period	Economic, Social, Political Status/Roles	Laws, if any
1. Early history (2nd-12th Centuries)		
2. Early and late feudal periods (12th-19th centuries)		
3. Meiji Period and military rule (late 19th-mid-20th centuries)		
4. Post-World War II		

EQUAL OPPORTUNITY EMPLOYMENT LAW, 1986

Conflicting Views of the Equal Employment Opportunity Law

	Stand of Representatives	Contents of Three Proposals Made by Subcommittee on Working Women		
Points of Conflict		Workers' Representatives	Employers' Representatives	Representatives of Public Interests
Guarantee of Equal Employment Opportunity and Treatment	Method to prescribe the law	Enforce provisions to prohibit all discrimination.	Provide for employers to make efforts to eliminate discrimination in all aspects. The Minister of Labor sets up the target guidelines for which employers should strive.	Set up the targets for which employers should strive in job opportunities and recruitment, but enforce prohibitive provisions in other aspects.
	Method to provide relief measures	Establish new administrative agencies to provide relief by recommendation or order.		Establish new mediation agency in every prefecture in which workers' and employers' representatives participate.
Partial Revision of the Labor Standards Law	Overtime/ work on holidays	Maintain the current protective provisions irrespective of the industry or occupation.	Abolish the current protective provisions irrespective of the industry or occupation.	Ease the current protective provisions for manufacturing industries or occupations but abolish for the others.
	Midnight work	Same as above.	Same as above.	Maintain the current protective provisions for manufacturing industries and occupations but abolish for others.
	Protection of expectant mothers	Expand the protection of maternity. (Both equality and protection are necessary.)	Oppose extending the period of maternity leave.	Extend the period to 10 weeks before and after delivering twins or more, but to 8 weeks for other cases.
	Menstruation leave	Maintain as it is.	Abolish it.	Abolish it as a rule, but consider it in case employee is feeling too ill to work.

REFORM PROVIDED BY 1947 CONSTITUTION AND EQUAL OPPORTUNITY LAW

Traditional Practice Regarding Women	Changed by Article #	Description of New Status/Practice
Women's roles confined to those of wife and mother		
Women took menial jobs in times of economic necessity		
Women not allowed to take part in politics		
Women's marriage partners chosen by their families for the good of the family		
Women not allowed to inherit or own property		
Women denied education		

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In many traditional cultures, one can find that in addition to freedom of thought, speech, belief, and association, rights to group membership, such as extended family, and access to land have been very important.

Access to land has often been regarded as the most cherished right by many peoples in traditional cultures in Nigeria. While variations exist in major cultural groups, one important common principle is found in all these groups: land belongs to the community as a whole, and the chief or the king is the custodian or guardian of the land on behalf of the community.

In the traditional land tenure system of Hausa-Fulani regions of northern Nigeria, every adult individual's right to occupy and farm a section of communal land to provide for his/her family was recognized. The amount of land allocated to an individual depended upon his/her needs, status, and relationship to the group. However, occupation and use of the communal land was conditional upon fulfilling several obligations, such as the proper use of land, and meeting obligations to the group, such as joining in the defense and protection of the group, raising sufficient food to feed the family, contributing to the common stocks for the communal festivals, and paying taxes levied by the rulers. The individual was not vested with ownership right or the right to unilaterally transfer the land. These rights were vested in the chief, as the custodian. Therefore, there is/was no concept of freehold title; there did not evolve a class of absentee landlords, since the idea of leasing out land was alien.

In the traditional land tenure system of the Yoruba, the Alafin of Oyo was regarded as the custodian of the Yoruba lands. Some of the principles discussed above were also applicable in the case of the Yoruba. One important difference was that in the Yorubaland, forested lands came under the guardianship of a hunters' fraternity, whose approval had to be obtained for the use of forest land and resources. Other important principles that prevailed among the Yoruba were that only the male issues or relatives could inherit the farms, and no parts of family lands could be sold or leased out without the unanimous consent of all members of the family.

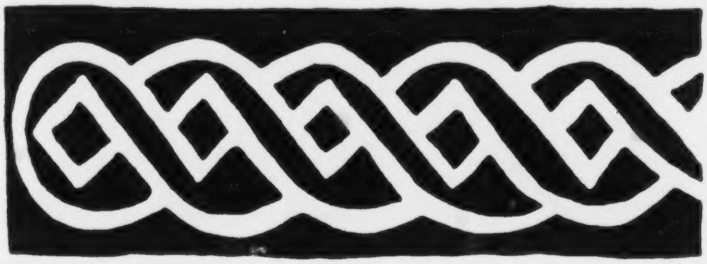
In the Ibo system, the right of private ownership of land was recognized with respect to certain lands. However, like the other cultures, inheritance rights were recognized for males only and any alienation of family land had to be consented to by all family members.

Islam and European colonialism introduced significant changes. Islam emphasized individual property rights and also extended inheritance rights to women. Under the colonial system, the idea of "freehold title" became widely introduced along with greater recognition of individual property ownership rights; the concept of "crown lands" was also introduced, allowing the British governor to become the custodian of some lands.

This brief background on the ways in which some of the traditional cultures of Nigeria viewed the concept of rights provides a context for the lessons in this unit. The first lesson is a brief introduction to stereotypes that Americans and Nigerians have about each other. The second lesson asks students to analyze the legal system of the Ibo people prior to contact with Christian missionaries and European colonizers. Lesson 3 is designed to provide students with an historical context for analyzing and understanding the contemporary challenges of constitutional government in Nigeria. The final two lessons present case studies of two such challenges, one dealing with religion and family law, the other with the press and civil liberties.

NIGERIA

by Folu Ogundimu, Lynn Parisi, and Akbarali Thobhani



INTRODUCTION

Nigeria is Africa's most populous country, with a population of over 100 million people. Formerly a British colony, the country has been independent since 1960. Within its borders exist a wide variety of peoples with rich cultures. The most well known of the cultural groups are the Yoruba, the Ibo, the Hausa, and the Fulani. Islam has been a major cultural force in the northern parts of Nigeria for several centuries. The ancient cities of Kano, Katsina, and Zaria were well integrated into the ancient trans-Sahara trade network that linked West Africa with the Mediterranean world. As a result of European colonialism, the southern regions of Nigeria became more influenced by Christianity and European cultural influences.

One of the themes that has been much debated concerns the extensive recent literature on human rights, the presence or absence of principles of human rights in non-Western traditional cultures. Some writers argue that the very concept of human rights has been a Western, European invention, but many other writers have rejected this view. A closer examination of most any traditional African society and culture will reveal that the concept of rights and obligations is not alien to them. With respect to rights in the traditional context, the large amount of scholarship conducted points to the following general observations.

1. Rights in the traditional cultures can be said to have existed within the bounds and by virtue of membership in particular groups. There was generally no recognition of universality of rights. If a person was not a member of a particular group, then that person was not accorded the same rights.

2. Rights in traditional cultures were derived from and sanctioned by a set of social values rather than constitutional principles. Therefore, the kinds of rights emphasized in traditional cultures have differed from those emphasized in Western constitutional approaches. In fact, in the recent history of human rights development in Nigeria, there has sometimes been conflict with respect to certain rights due to different ways in which the traditional society and the constitutional society of modern Nigeria attached significance to them.

1

U.S. PERCEPTIONS OF AFRICA: NIGERIAN PERCEPTIONS OF THE UNITED STATES

Introduction: This exercise asks students to analyze some cross-cultural perceptions that have influenced interactions between Africans and Americans. They also begin developing a data base of accurate information about Nigeria.

Objectives: Students will be able to:

1. Identify some common misperceptions, thereby documenting the need for increased understanding among Africans and Americans.

2. Analyze a set of perceptions to explain the source of beliefs.

Materials: Copies of Handout N-1 and N-2

Time Required: 1 class period

Procedure:

1. Provide students with Handout N-1, assigning students to pairs for purposes of reading the statements and quickly deciding whether they agree or disagree with each.

2. Once students have completed their responses, discuss each of the statements. Use the observations of Michael Bamidele Adeyemi, a Nigerian graduate student at Indiana University (Handout N-2), in this discussion. These observations are based on the writer's experiences in Nigeria and the United States. You may also want to use the data below to provide a stronger focus on Nigeria:

- Nigeria is one of Africa's many countries. Its area is 356,575 square miles, making it slightly larger than California, Nevada, and Utah combined. Its population (mid-1990 estimate) is 109.8 million, 25 percent of Africa's population.
- Nigeria is located in the tropics, stretching from 4°N latitude to 14°N latitude. Vegetation is wide-ranging, from mangrove swamps on the great Niger Delta near the coast to dry, arid sands of the Sahel on the southern fringes of the Sahara Desert in the north. Between lie several belts of rainforests, scattered hills, and undulating plateau with hills of granite and stone.
- Nigeria's population is made up of 38 ethno-linguistic groups, representing about 250 different ethnic groups. The major groups are the Hausa, Ibo, and Yoruba.
- In a recent year, Nigerians raised 26 million head of goats, 13.2 million sheep, 12.2 million cattle, and 1.3 million pigs. Leading crops were yams, cassava, sorghum, millet, and plantains. Nigerians also fish in both inland waters and the Atlantic Ocean.
- There are currently 36 English language periodicals in Nigeria, compared to four local language periodicals.
- Nigeria's two largest cities are Lagos and Ibadan, both having populations in excess of 1.5 million by the mid-1980s; 22 other cities in Nigeria had populations exceeding 100,000.

- Nigeria is active in international trade. Among the leading countries from whom Nigeria imports are the United Kingdom, Germany, France, Japan, and the United States; leading importers of Nigerian goods are the United States, the Netherlands, Spain, France, and Italy. Nigeria's GNP per capita fell from $640 in 1985 to $370 in 1989.
- Nigeria has 34,240 primary schools, 5,547 secondary schools, 135 teacher-training institutions, 240 technical and vocational schools, 27 universities, and 69 polytechnics and colleges of technology.
- Women make up 31.9 percent of the work force in Nigeria. They are most strongly represented in trade, restaurants, and hotels, where they make up 63.7 percent of the work force.

3. Conclude the lesson with a large-group discussion about the lists. Ask:
    - Which of your previous ideas about Africa do you now think are misperceptions?
    - What was the source of these misperceptions? Where did you get your "information" about Africa?
    - Which of the Nigerians' beliefs about the United States were accurate? Which were inaccurate?
    - Do Nigerians have a more accurate view of the United States than we have of Africa? How do students think Nigerians' stereotypes are shaped?

Handout N-1

STATEMENTS ABOUT AFRICA

1. Africa is a country.
2. Snow is common throughout Africa.
3. Africans do not eat meat.
4. English is rarely spoken in Africa.
5. Africa is not urbanized.
6. Africa is still uncivilized.
7. The average African is polygamous.
8. African women do not have educational opportunities.

STATEMENTS ABOUT THE UNITED STATES

1. Americans are the richest people in the world.
2. America is a land of academic opportunities.
3. Americans are hard working.
4. America is technologically advanced.
5. America is politically mature.
6. Americans exhibit unbridled freedom.
7. Americans have an individualistic attitude to life.
8. Americans carry guns.

PERCEPTIONS OF WHAT AMERICANS BELIEVE ABOUT AFRICA FROM MY PERSONAL EXPERIENCE OF SIX MONTHS IN THE UNITED STATES

by
Michael Bamidele Adeyemi

1. **Americans believe that Africa is a country.** From discussions with many Americans, there is the general belief that Africa is a country. In fact, Africa is a continent made up of many countries.

2. **Some Americans believe that snow is a universal phenomenon.** During an introduction, an American learned that I was from Nigeria. He questioned me, "Does it snow in your country?" The fact is that most parts of Africa lie within the tropics, and snow falls only at high altitudes.

3. **Americans believe that Africans don't eat meat.** Many Americans have asked me whether we eat meat in Africa. Cattle, goats, sheep, fish, and wild animals are found all over Africa. Meat is therefore very common.

4. **Americans believe the English language is rarely spoken in Africa.** At a dinner organized by an American friend, many questions were asked as to whether or not we speak English in Africa. Many countries in Africa were colonized by Britain. In Nigeria, English is the official language and the medium of expression from the primary school level to the university level.

5. **Many Americans believe that Africa is not urbanized.** Questions such as "Do you have five hundred people in your village?" are very common during discussions with American friends. Africa as a continent is very urbanized. Many cities in Africa have populations of over one million. Examples of cities are Ibadan, Cairo, Khartoum, Lagos, Accra, Nairobi, Dakar, and Mombasa.

6. **Many Americans believe that Africa is still uncivilized.** Most Americans believe that people live in trees and go about naked. Many have questioned me as to whether we wear pants in Africa. They picture the average African living in a tribal setting. The truth of the matter is that Africa has maintained a high level of civilization from the days of empires such as Mali, Songhai, and Ghana. Africans live in houses and can be found in cities and towns. Traditional as well as foreign dress is worn.

7. **Americans believe that the average African is polygamous.** An American friend was surprised to learn that I was married to only one wife. "Incredible," he commented. The truth of the matter is that the present demands of the society do not allow for the acquisition of many wives. Hence, many young men of the present generation are monogamous. However, monogamy or polygamy is a matter of choice.

8. **Many Americans still believe that the African woman has no place in the society, especially in terms of education.** A question such as "Do African women graduate from your colleges and universities?" is common. Many are not even aware that there are many universities in Africa. Many African women are highly educated. Female lawyers, doctors, professors, and engineers are all over Africa. Gone are those days when the place of the African woman was in the kitchen.

From *African Studies Outreach* (Winter 1983-1984), Indiana University, Bloomington, Indiana.

STEREOTYPES NIGERIANS HAVE ABOUT AMERICANS, AS SEEN BY A NIGERIAN

1. **Americans are the richest people in the world.** Most Nigerians associate America with wealth. In fact, to Nigerians the average American is synonymous with "the dollar."

2. **America is a land of academic opportunities.** Nigerians believe that America is a land of various educational possibilities. Given the opportunity, the average Nigerian believes in getting the golden fleece [a university degree] from Uncle Sam's country.

3. **Americans are hardworking.** The acceptance that America has no room for laziness is widespread among Nigerians. It is generally believed that indolence is not allowed.

4. **America is technologically advanced.** Nigerians have no doubt about how well the American systems work. Good examples are communication, electricity, and transportation.

5. **America is politically mature.** Most Nigerians believe that democracy is well practiced in America. Verbal or physical war does not take place between or among political parties. Defeated political parties even congratulate the elected political party. There is cooperation between and among political parties.

6. **Americans exhibit unbridled freedom.** Many Nigerians have the belief that a high degree of freedom exists in America. The belief is also widespread that this is the main cause of indiscipline and delinquency.

7. **The average American has an individualistic attitude to life.** The "do it alone" philosophy is believed to be the order of the day in America. Everybody minds his own business, and there is no interference from any quarter. Independence from one's parents is a typical example.

8. **Americans carry guns.** Most Nigerians believe that the average American has a gun hidden somewhere in his pocket. The belief is widespread that the slightest provocation may result in shooting.

2

A CASE FOR THE EGWUGWU: A FRAMEWORK FOR COMPARING CULTURES AND LEGAL SYSTEMS

Introduction: This lesson asks students to analyze the legal system of the Ibo people of Nigeria prior to their contact with Christian missionaries and European colonizers as a starting point for comparing U.S. dispute resolution methods with those used in other countries. African literature is the source material for learning about Ibo culture and legal traditions.

Objectives: Students will be able to:

1. Identify the relationship between legal traditions and the values and norms of a culture.
2. Analyze a legal question using the case study method.
3. Apply a framework for comparing legal systems to a single case.
4. Draw conclusions about the similarities and differences between the historical Ibo and U.S. approaches to dispute resolution.

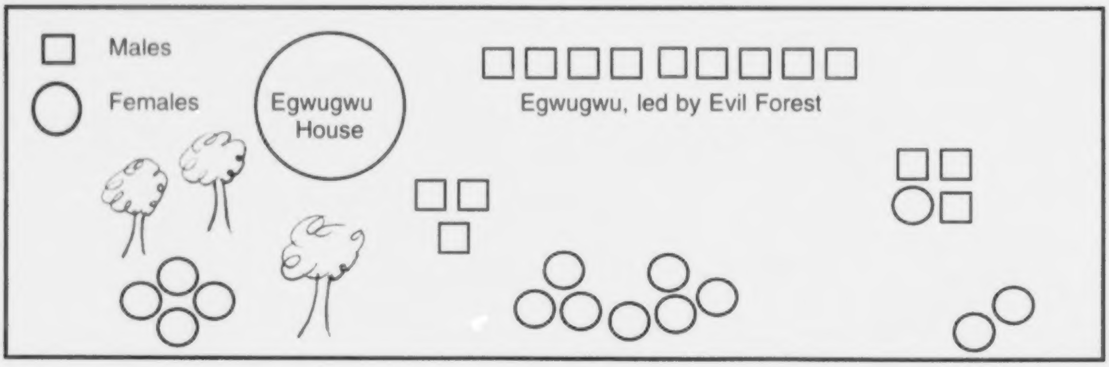
Materials: Copies of Handouts N-3 and N-4; chalkboard diagram similar to that in step 2

Time Required: 1-2 class periods

Procedure:

1. Begin the lesson by telling students that you want them to prepare to visit a culture distant in both time and place. Explain that they will be learning about the Ibo people of Nigeria prior to contact with European missionaries or colonizers. Tell students that they will be learning about how the Ibo people resolved an issue of spousal abuse.

2. Provide each student with a copy of Handout N-3. Introduce the case by reading the first paragraph aloud and helping students to visualize the scene with the diagram below. You may also find the **Teacher Background Information** useful in preparing students for the reading.



3. Once students have an understanding of the setting, assign specific tasks. Assign students to read the **first two and one-half pages** of the case. Ask half the class to look for clues about the culture. Tell the other half of the class to summarize the case that is being considered. They should look for facts (what happened), the issue (the question to be decided), and the arguments (what each side is asking for and why).

4. Following the reading, conduct a large-group discussion in which the class generates a list of cultural clues and summarizes the case. Student responses should correspond to the following:

Cultural clues: male-dominated, belief in spirits, agrarian society, form of economic exchange, method of dispute resolution

Case study summary:

Facts: Husband paid a bride price; wife left husband; he has requested that the wife or the bride price be returned; wife was seriously beaten and suffered a miscarriage.

Issue: Should the bride price be returned?
Does the society have an interest in preventing abuse?

Arguments:

Husband: Law requires the family to return the bride price and children, if the wife leaves; he has fulfilled all of his duties to his in-laws; claims that she was unfaithful, thus justifying a beating.

Wife's brother: Bride price does not need to be returned because she ran away to safe her life; the children belong to the husband but they are too young to leave their mother; the husband lies about the lover; the husband is crazy and they will punish him if he ever beats her again.

5. Once students have an understanding of the culture and the dispute, have them work in small groups to predict how the case will be resolved. While the small groups are working, ask one of your students with a flair for the dramatic to prepare to roleplay Evil Forest and deliver the decision (see page 3 of Handout N-3).

6. List the predictions that the small groups develop. Tell them that Evil Forest is coming to deliver the decision of the Egwugwu. Ask them to compare their decision with that of the Ibo court. Following the dramatic reading, discuss the Egwugwu decision. How was this decision similar and different from their prediction? How important were the cultural clues in understanding the legal decision? What relationship do they see between law and culture?

7. To conclude the lesson, ask students to make comparisons between the Ibo method and the U.S. system. Summary questions 3 through 6 on Handout N-3 ask students to draw some conclusions about the similarities and differences of the two systems and to think about the benefits and limits of the legal system in our society and that of the Ibo.

8. As an alternative to questions 3 through 6, help students develop the skill to make comparisons of legal systems across cultures by providing each student with Handout N-4. Through large-group discussion, answer each question for the Ibo legal system in one column and the U.S. legal system in another.

Extension:

As an extending activity, you might assign students to read the entire Chinua Achebe novel from which the reading was taken, or another Chinua Achebe work. After students have read the novel, give them about a week to locate the references. They may then write short reports on the book, emphasizing information learned about the Ibo culture. Collectively, the class could compile a list of proverbs and other folkloric material used in the novel; how the proverbs and other material function in the author's novels could be the topic of a class discussion.

Teacher Background Information:*

The language of Chinua Achebe's novels is a language that stands on its own: a blend of Igbo and English idiom which readily reflects the life and thought of the Ibos. This language is used by the author not merely as a medium for narrating incidents, but as the life-blood of the incidents themselves. There is sustained creativity achieved through the judicious blend of proverbs, aphorisms, anecdotes, and folktales, which is responsible for the intangible but ever-present grip that the novels have upon readers. By refraining from the use of English equivalents of his folkloric materials, Achebe succeeds in portraying something of the culture and the world view of the society in which the novels have been set. As we see in *Things Fall Apart*, the art of conversation is highly regarded among the Ibo...

One of the first things that strikes the reader is Achebe's liberal use of folktales, proverbs, and other folkloric material. In some cases the theme of a tale is condensed into a figure of speech. Witness the case of the lizard and the mouse going to swim and the mouse dying of cold while the lizard's scales keep him dry; or that of the young antelope dancing herself lame while the main dance was yet to come. These two situations were used as similes in *No Longer at Ease*...

A common feature in the philosophy of Africans is that statements on the interpretation of life and human experience are imputed to old men, birds, and animals. As well as referring to "our elders," Achebe attributes proverbs and wise sayings to "Eneke the bird." Of frequent occurrence, too, is the case of "the lizard that falls from the tall iroko tree" saying that if no one would praise him, he would praise himself.

Another aspect of culture that comes to the surface as we read through the novels is the religion of the Igbo people coupled with other observances. The disposal (in the past) of twins in the evil forest and the killing of Ikemefuna in *Things Fall Apart* were done out of fear of *Chukwu*, the *Supreme Being*, and also in order to appease *Ani*, the earth goddess, "who is the ultimate judge of morality. Moreover, it is *Ani* who gives fertility to the land. When in *Things Fall Apart* Unoka was unsuccessful with his farms, he asked Chika, the priestess of *Ani*, to tell him the cause of his failure, adding, "Every year before I put any crop in the earth, I sacrifice a cock to *Ani*, the owner of the land..."

A word of common occurrence in the novels is *Chi*, or one's personal god. It is no wise thing to challenge one's *Chi* to single combat. *Chi* is a sort of guardian angel, who can be good or bad. Unoka's *Chi* is bad, so evil follows him to the end. When Ekwefi escapes being shot by her husband, a friend says to her, "Your *Chi* is very much awake, my friend." Ekwefi herself blames her not bearing live children on her *Chi*. These words and statements, among numerous others, do point to the fact that the Igbos have a belief in a Supreme Being and also in lesser gods and spirits.

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*From "The Cultural Content of Chinua Achebe's Novels," by E.Y. Egblewogbe, *African Studies* (Urbana, IL: University of Illinois, African Studies Program, 1987), pp. 213-215.

Belief in life after death and the close link between the living and the dead, so characteristic of African life and thought, are reflected in the *egwugwu* or ancestral spirit symbolized by mask-wearing elders on special occasions. It is believed that the spirits of the departed do supervise the affairs of their living relations and reward or punish them as the case may be. "I am Evil Forest," says one of the *egwugwu*. "I kill a man when his life is sweetest to him... I am... Drymeat-that-fills-the-mouth, I am fire that burns without faggots..." As Achebe said,

> The land of the living was not far removed from the domain of the ancestors. There was coming and going between them, especially at festivals and also when an old man died, because an old man was very close to the ancestors.

The settlement of the dispute between Ngbafo and her husband in *Things Fall Apart* shows, in addition to statements here and there, the social organization of the Igbo people in the past—they had neither kings nor chiefs in the political sense. They had chief priests, elders, and titled men who steered the affairs of the "clan." Where a particular case was considered very serious, the ancestral spirits, the *egwugwu*, were brought in. Thus, the maintenance of peace and order rested on semi-religious foundations.

Among African ethnic groups everybody was his brother's keeper. Life was a communal affair. People were therefore expected to follow certain norms so as to ensure peaceful coexistence. This conception of life shines through statements such as the following:

> The white man is very clever.... Now he has won our brothers, and our clan can no longer act like one. He has put a knife on things that held us together and we have fallen apart.
> An only palm fruit does not get lost in the firs.
> A kinsman in trouble had to be saved not blamed.
> Anger against a brother was felt in the flesh, not in the bone.
> When one finger brings palm oil, it soils the others.

In *Arrow of God* we see how farming, the main occupation of the Igbos, was inextricably linked with the worship of the local god, *Ulu*; so much so that it was Ezeulu, the high priest, who announced the various seasons in the agricultural year to enable people to carry on their activities. The very appearance of a new moon had to be announced on a metal gong by the priest. The following passage is an example of how Igbo people interpreted the natural environment. Ezeulu had just beaten the gong to announce the appearance of the fourth moon: "*Onwa atuo.... Onwa atuo....* people could be heard calling all over the village."

> "Moon," said the senior wife, Matefi, "may your face meeting mine bring good fortune."
> "Where is it?" asked Ugoye, the younger wife. "I don't see it. Or am I blind?"
> "Don't you see beyond the top of the unwa tree? Not there. Follow my finger."
> "Oho, I see it. Moon, may your face meeting mine bring good fortune. But how is it sitting? I don't like its posture."
> "Why?" asked Matefi.
> "I think it sits awkwardly—like an evil moon."
> "No," said Matefi, "A bad moon does not leave anyone in doubt. Like the one under which Okuata died. Its legs were up in the air."
> "Does the moon kill people?" asked Obiageli, tugging at her mother's cloth.

Thus, although Achebe has not presented us with ethnographic monographs on the Igbos, the reader of his novels gets a clear picture of the ways of life and thought of the people at particular points in time.

A CASE FOR THE EGWUGWU

It was clear from the way the crowd stood or sat that the ceremony was for men. There were many women, but they looked on from the fringe like outsiders. The titled men and elders sat on their stools waiting for the trials to begin. In front of them was a row of stools on which nobody sat. There were nine of them. Two little groups of people stood at a respectable distance beyond the stools. They faced the elders. There were three men in one group and three men and one woman in the other. The woman was Mgbafo and the three men with her were her brothers. In the other group were her husband, Uzowulu, and his relatives. Mgbafo and her brothers were as still as statues into whose faces the artist has molded defiance. Uzowulu and his relatives, on the other hand, were whispering together. It looked like whispering, but they were really talking at the top of their voices. Everybody in the crowd was talking. It was like the market. From a distance the noise was a deep rumble carried by the wind.

An iron gong sounded, setting up a wave of expectation in the crowd. Everyone looked in the direction of the *egwugwu** house. *Gome, gome, gome, gome* went the gong, and a powerful flute blew a high-pitched blast. Then came the voices of the *egwugwu*, guttural and awesome. The wave struck the women and children and there was a backward stampede. But it was momentary. They were already far enough where they stood and there was room for running away if any of the *egwugwu* should go towards them.

The drum sounded again and the flute blew. The *egwugwu* house was now a pandemonium of quavering voices: *Aru oyim de de dei!* filled the air as the spirits of the ancestors, just emerged from the earth, greeted themselves in their language. The *egwugwu* house into which they emerged faced the forest, away from the crowd, who saw only its back with the many-colored patterns and drawings done by specially chosen women at regular intervals. These women never saw the inside of the hut. No woman ever did. They scrubbed and painted the outside walls under the supervision of men. If they imagined what was inside, they kept their imagination to themselves. No woman ever asked questions about the most powerful and the most secret cult in the clan.

And then the *egwugwu* appeared. The women and children sent up a great shout and took to their heels. It was instinctive. A woman fled as soon as an *egwugwu* came in sight. And when, as on that day, nine of the greatest masked spirits in the clan came out together it was a terrifying spectacle. Even Mgbafo took to her heels and had to be restrained by her brothers.

Each of the nine *egwugwu* represented a village of the clan. Their leader was called Evil Forest. Smoke poured out of his head.

The nine villages of Umuofia had grown out of the nine sons of the first father of the clan. Evil Forest represented the village of Umueru, or the children of Bru who was the eldest of the nine sons.

“Umuofia kwenu!” shouted the leading *egwugwu* pushing the air with his raffia arms. The elders of the clan replied, “*Yaa!*”

**egwugwu*: an elder of the village who impersonates one of the village's ancestral spirits. Traditionally, an *egwugwu* was a well-respected member of the community who was familiar with all the village people and their relationships with each other.

Questions from “Law and Literature: An African Example,” by Diane S. Kendall, *Intercom* #100 (New York: American Forum for Global Perspectives in Education, 1981). Reading from Chapter 18, *Things Fall Apart*, by Chinua Achebe. Copyright © 1959 by Chinua Achebe. Reprinted by permission of William Heinemann Limited.

"*Umuofia kwenu!*"

"*Yaa!*"

"*Umuofia kwenu!*"

"*Yaa!*"

Evil Forest then thrust the pointed end of his rattling staff into the earth. And it began to shake and rattle, like something agitating with a metallic life. He took the first of the empty stools and the eight other *egwugwu* began to sit in order of seniority after him.

When all the *egwugwu* had sat down and the sound of the many tiny bells and rattles on their bodies had subsided, Evil Forest addressed the two groups of people facing them.

"Uzowulu's body, I salute you," he said. Spirits always addressed humans as "bodies." Uzowulu bent down and touched the earth with his right hand as a sign of submission.*

"Our father, my hand has touched the ground," he said.

"Uzowulu's body, do you know me?" asked the spirit.

"How can I know you, father? You are beyond our knowledge."

Evil Forest then turned to the other group and addressed the eldest of the three brothers.

"The body of Odukwe, I greet you," he said, and Odukwe bent down and touched the earth. The hearing then began.

Uzowulu stepped forward and presented his case.

"That woman standing there is my wife, Mgbafo. I married her with my money and my yams. I do not owe my in-laws anything. I owe them no yams. I owe them no coco-yams. One morning three of them came to my house, beat me up and took my wife and children away. This happened in the rainy season. I have waited in vain for my wife to return. At last I went to my in-laws and said to them, 'You have taken back your sister. I did not send her away. You yourselves took her. The law of the clan is that you should return her bride-price.' But my wife's brothers said they had nothing to tell me. So I have brought the matter to the fathers of the clan. My case is finished. I salute you."

"Your words are good," said the leader of the *egwugwu*. "Let us hear Odukwe. His words may also be good."

Odukwe was short and thickset. He stepped forward, saluted the spirits, and began his story.

"My in-law has told you that we went to his house, beat him up and took our sister and her children away. All that is true. He told you that he came to take back her bride-price and we refused to give it to him. That also is true. My in-law, Uzowulu, is a beast. My sister lived with him for nine years. During those years, no single day passed in the sky without his beating the woman. We have tried to settle their quarrels time without number and on each occasion Uzowulu was guilty—"

"It is a lie!" Uzowulu shouted.

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*Traditionally, the Ibo believed the earth was sacred because it gave birth to them. To insult the earth was a grave offense.

"Two years ago," continued Odukwe, "when she was pregnant, he beat her until she miscarried."

"It is a lie. She miscarried after she had gone to sleep with her lover."

"Uzowulu's body, I salute you," said Evil Forest silencing him. "What kind of lover sleeps with a pregnant woman?" There was a loud murmur of approbation from the crowd. Odukwe continued:

"Last year when my sister was recovering from an illness, he beat her again so that if the neighbors had not gone in to save her she would have been killed. We heard of it, and did as you have been told. The law of Umuofia is that if a woman runs away from her husband her bride-price is returned. But in this case she ran away to save her life. Her two children belong to Uzowulu. We do not dispute it, but they are too young to leave their mother. If, in the other hand, Uzowulu should recover from his madness and come in the proper way to beg his wife to return she will do so on the understanding that if he ever beats her again we shall cut off his genitals for him."

The crowd roared with laughter. Evil Forest rose to his feet and order was immediately restored. A steady cloud of smoke rose from his head. He sat down again and called two witnesses. They were both Uzowulu's neighbors, and they agreed about the beating. Evil Forest then stood up, pulled out his staff and thrust it into the earth again. He ran a few steps in the direction of the women; they all fled in terror, only to return to their places almost immediately. The nine *egwugwu* then went away to consult together in their house.

They were silent for a long time. Then the metal gong sounded and the flute was blown. The *egwugwu* had emerged once again from their underground home. They saluted one another and then reappeared on the *ilo.*

Evil Forest speaks for the Egwugwu:

"Umuofia kwenu!" roared Evil Forest, facing the elders and grandees of the clan.

"*Yaa!*" replied the thunderous crowd; then silence descended from the sky and swallowed the noise.

Evil Forest began to speak and all the while he spoke everyone was silent. The eight other *egwugwu* were as still as statues.

"We have heard both sides of the case," said Evil Forest. "Our duty is not to blame this man or to praise that, but to settle the dispute." He turned to Uzowulu's group and allowed a short pause.

"Uzowulu's body, I salute you," he said.

"Our father, my hand has touched the ground," replied Uzowulu, touching the earth.

"Uzowulu's body, do you know me?"

"How can I know you, father? You are beyond our knowledge," Uzowulu replied.

"I am Evil Forest. I kill a man on the day that his life is sweetest to him."

"That is true," replied Uzowulu.

"Go to your in-laws with a pot of wine and beg your wife to return to you. It is not bravery when a man fights with a woman." He turned to Odukwe, and allowed a brief pause.

"Odukwe's body, I greet you," he said.

"My hand is on the ground," replied Odukwe.

"Do you know me?"

"No man can know you," replied Odukwe.

"I am Evil Forest, I am Dry-meat-that-fills-the-mouth, I am Fire-that-burns-without-faggots. If your in-law brings wine to you, let your sister go with him, I salute you." He pulled his staff from the hard earth and thrust it back.

"*Umuofia kwenu!*" he roared, and the crowd answered.

"I don't know why such a trifle should come before the *egwugwu*," said one elder to another.

"Don't you know what kind of man Uzowulu is? He will not listen to any other decision," replied the other.

As they spoke two other groups of people had replaced the first before the *egwugwu*, and a great land case began.

Summary Questions

1. What was the dispute between Mgbafo and Uzowulu?
2. Who decided what was to be done, and what was that decision?
3. Why do you think the *egwugwu* saluted humans as "bodies"? Why did Uzowulu and Odukwe touch the ground when saluted by Evil Forest? How do trials in the United States begin? Are there any similarities between the beginnings of Ibo and American trials?
4. Is there any similarity between the way Evil Forest was treated by the people and the way we treat judges? Account for any similarities or differences. Do you think the Ibo would call judges in the United States *egwugwu*? Why or why not?
5. What did the elder mean when he said that Uzowulu would not listen to any other decision than that made by the *egwugwu*? Are there any parallels in American society?
6. Evil Forest said, "We have heard both sides of the case. Our duty is not to blame this man or to praise that, but to settle the dispute." When do trials in the United States have the same purpose? When is the purpose different? How is the purpose of the Ibo's method of resolving disputes reflected in the settlement made by the *egwugwu*?

FRAMEWORK FOR ANALYZING AND COMPARING LEGAL SYSTEMS

	Culture 1	Culture 2
1. What is considered a legal problem?		
2. Who applies the law in this culture? Who is/are the decision maker(s)? (What is their background? How are they chosen? What exactly is their role in solving the problem?)		
3. What techniques are used to establish the facts, the truth in the case?		

Based on the essay "Looking at the Law: Here, There, and Everywhere," by Isadore Starr, *Intercom* #100 (New York: American Forum for Global Perspectives in Education, 1981), pp. 4-12.

	Culture 1	Culture 2
4. How are those involved in the legal problem presented?		
5. What is the forum (setting) for settling the problem? Is there a special place? How does the place reflect the role of law, social organization, and values?		
6. What is the ultimate goal in settling the problem?		
7. What kinds of punishments are assigned?		

3

NIGERIA'S HISTORICAL TIMELINE

Introduction: This reading and timeline activity is designed to provide students with an historical context for analyzing and understanding the contemporary challenges of constitutional government in Nigeria, presented in following lessons.

Objectives: Students will be able to:

1. Identify key periods and milestones in the evolution of constitutional government in Nigeria.

2. Analyze cost and benefits in British colonial rule, civilian self-rule, and military rule in Nigeria.

3. Discuss the unique challenges of establishing a Western-style constitutional government in a new nation with its own traditions of government and social and political organization.

4. Identify the three main regions and ethnic groups that tend to divide Nigeria into strong competing sections.

Materials: Copies of Handout N-5; string or yarn, tacks, poster paper, and markers

Time Required: 1-2 class periods

Procedure:

1. Introduce the lesson by telling students that, in order to understand Nigeria's current government and the challenges in institutionalizing a government based on a written constitution, they must know something about that nation's social and political history. The class will work together to create a timeline of Nigerian history.

2. Review with students what they know about traditional tribal society in Nigeria based on the Egwugwu lesson. Lead students to the observation that, although there may not have been any national, formal government in traditional tribal societies in Nigeria, there was a strong tradition of social organization, law, and dispute resolution that predated any contact with Western people and customs.

3. Distribute Handout N-5, a brief overview of Nigerian history. Divide students into four small groups, assigning each group responsibility for learning and being able to teach the rest of the class about significant events and issues during one time period in Nigerian history. Each group should take responsibility for one section of the reading. Groups may use the questions at the end of the handout to guide their data collection. Explain that either in verbal or picture format, each group is to depict the important issues and events of the period for a visual display that will be posted on a timeline around the room. The timeline may be created with string along one or two walls, or simply drawn across the chalkboard.

4. Allow time for student groups to complete their assignment. When the work is completed, ask each group to post their material appropriately on the timeline and to designate a presenter. As a class, proceed through the timeline, allowing each group to present its information.

5. Conduct a class discussion on the challenges an independent Nigeria faced in establishing a Western-style democratic government. Use the following questions in the discussion:

- How might the customs of some traditional societies have conflicted with such a government? (Students should cite the tradition of kings in some societies and the statelessness and leaderlessness of other societies.)
- Does the nation of Nigeria reflect logical or pre-existing social and political boundaries? What and how many different ethnic groups are brought together within Nigerian statehood? What obstacles do so many different groups create for national unification?
- Do students think that British colonial rule helped or hindered national development and self-government in Nigeria? What were the positive and negative legacies of British rule?
- Between 1960 and the 1980s, Nigeria had instances of civilian and military rule. What were positive and negative aspects of each? How have students generally thought about military rule for a country? Does the Nigerian case provide any evidence that military rule might be beneficial in some cases?

6. Divide the class into three study groups, one for the Hausa and Fulani, one for the Yoruba, and one for the Ibo. Allow groups one class period for library research to learn as much as they can about the social organization, cultural values, and histories of these diverse groups. Students may also obtain cultural information about these groups from the introductory essay for this unit, which may be distributed as a reading. Spend an additional class period allowing each group time to report on their findings. Conclude the class period with a discussion of reasons why these groups might come into conflict.

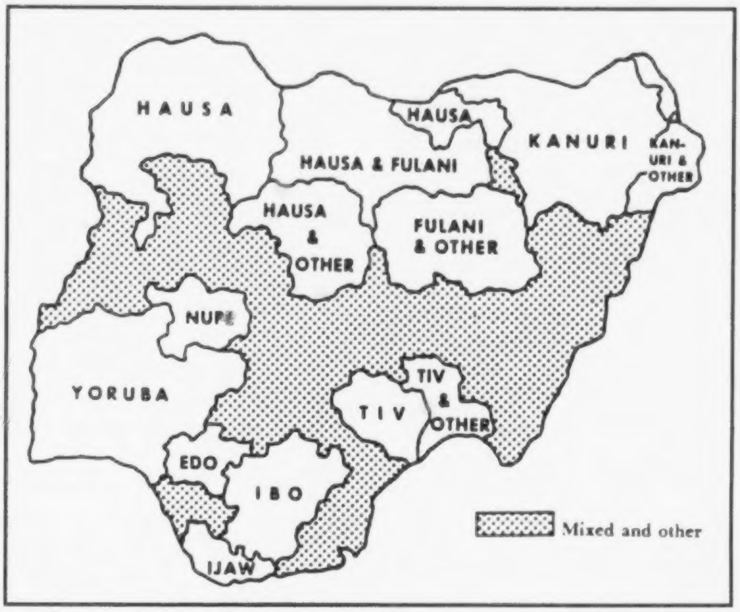
Additional Resources:

Two Voices from Nigeria: Nigeria through the Literature of Chinua Achebe and Buchi Emecheta (Stanford, CA: The Africa Project, n.d.).

African Studies: Curriculum Materials for Teachers (Urbana, IL: University of Illinois Center for African Studies, 1985).

A Brief History of Nigeria

The area of Africa now known as Nigeria is the home of many peoples, who are proud to be able to trace their histories back for many centuries. Principal groups in the country today include the Fulani and Hausa, in northern Nigeria; the Yoruba in Western Nigeria; and the Ibo in Eastern Nigeria.



Source: Foreign Policy Association.

Early History

Peoples of Nigeria have had a highly developed culture for thousands of years. Archaeological finds provide evidence of an iron-working agricultural civilization in the area of northern Nigeria dating from 300 B.C. In more modern times, organized states such as Benin and Ife in southern Nigeria carried on trade and had highly developed arts and crafts centuries before contact was made between Europe and Africa. Art and artifacts record the civilizations not only of Benin and Ife, but also of kingdoms such as Nupe and societies such as the Igbo-Okwu. States in northern Nigeria carried out trade throughout the Mediterranean region.

European contact was initiated by the arrival of the Portuguese in the 15th century. Initially, Europeans were interested in finding gold in Africa. African states and societies traded goods with European nations throughout this period. By the 16th century, European interest in the region had shifted to the supply of slaves for colonies in both North and South America. The slave trade grew throughout the 16th and 17th centuries, continuing until the 19th century. The slave trade began to dwindle when, in 1806, the British banned overseas slave trading on British ships. The abolition of slavery in the United States in the 1860s and in the rest of the Americas by the 1880s contributed finally to the end of the trade.

As the slave trade was declining, European interests in Africa were shifting to focus on the acquisition of raw materials such as cotton, rubber, and tin, and on the potential of Africa as a market for European manufactured goods. British trading interests began to pressure the British government for more direct control over African regions. As a result, Lagos, the area now western Nigeria, was established as a British Royal Colony in 1862. A few years later, in 1885, at the Berlin Conference, European countries divided Africa into territories each could annex. Britain claimed the whole area now known as Nigeria.

British Colonial Rule

During their rule, the British experimented with governing systems for their new colony of Nigeria. Initially, the Royal Nigeria Company was established as a means of indirect rule through existing native leaders and native laws, with constant advice and supervision by the British. Indirect rule proved unsuccessful for the British because it conflicted with traditional social organization in some traditional groups within Nigeria. For example, the Ibo had a tradition of a stateless society, with no designated ruler. Seeing such a system as anarchistic, the British tried to remedy this situation by creating a system of chiefs to rule for them among the Ibo. In so doing, they created a privileged class that was in conflict with traditional Igbo values and social organization. The Ibo resisted British rule and the disruption of their traditional social structure and struggled against the British until 1920, when their resistance was quelled by British force.

British colonial rule had other profound effects on indigenous societies. The British introduced a cash economy in Nigeria, which forced Nigerians to accumulate money to survive. The British also introduced the concept of private land ownership and the sale of land to societies that had traditionally held land as open to communal use.

Finally, the development of an industrial and commercial economy drew people away from their ancestral villages to the cities for jobs. In these cities, people tended to become Westernized and, as such, more distant from their village counterparts. Some even went to England to receive Western educations. Upon returning to their own country, these people constituted an educational elite among their own people. However, they also experienced the difficulties of not fitting in either in British society or in their traditional village societies.

Among those who received an English education and conformed to Western ways arose a class of native civil servants, teachers, and preachers who succeeded in Western-style business and worked in the colonial government. In later years, this class would be the leaders of the move for independence and statehood.

With World War I, Nigerians were forced to serve in colonial British armies to fight for benefits to Britains back in Europe. Again in World War II native Nigerians were enlisted for the British armies in Africa. At the same time, the colonists were pressured to intensify food production for British troops and British nationals at home. The war spread the ideals of national freedom and political rights, paving the way for the struggle for independence.

Independence

Shortly after the close of World War II, in 1947, the British drafted a constitution for Nigeria, but Nigeria did not achieve independence for another 13 years, in 1960.

By the time it achieved independence, Nigeria had become factionalized into three competing groups—the Hausa-Fulani in the north, the Yoruba in the southwest, and the Ibo in the southeast. Although these three groups were the dominant political and social forces in the new nation, Nigeria was and is actually home to many other ethnic groups, each of which feared domination by the others. To maintain a balance of power, the 1960 constitution granted significant political power to each of the three main groups. This system prevented domination by any one group, but also institutionalized sectionalism in the new nation.

While Nigeria had an educated elite, the people as a whole did not have any experience in Western-style democracy. Moreover, the British colonial system had not left Nigeria with a viable economic structure for building economic independence. The colonial Nigerian economy had been based largely on the export of raw materials and the importation of manufactured goods. The new independent nation had very few industries with which to provide its people with manufactured products.

Sectionalism, a weak economy, and lack of experience in democratic self-government were formidable challenges for the new nation. From 1960 to the present, Nigeria has experienced political upheaval and insecurity as it tries to build a modern nation. In 1966, the government was overthrown by the army, led by Ibo army officers. Sectional and ethnic conflicts escalated into a civil war a year later. At that time, the Ibo region in eastern Nigeria seceded and formed a new state called Biafra. Millions of people died of starvation in the struggle known in the west as the Biafran War. In 1970, the Biafran struggle ended when the Ibo population surrendered and the federal military government regained control of the region.

Military rule continued. In 1976, a corrupt military government was overthrown and a new military regime established under General Murtala Mohammed. The new regime undertook major social and political reforms in an effort to prepare the nation for unification and civilian rule by 1979. Although Murtala Mohammed was assassinated in 1976, the new military leader continued the scheduled reforms.

Recent Years

On October 1, 1979 civilian elections were held and a civilian government headed by President Alhaji Shehu Shagari was established. A new constitution following the model of the U.S constitution was adopted. Nigeria became a federation of 19 states.

Corruption was a continuing problem in the new civilian government. National wealth from oil was syphoned off by corrupt leaders, and the gap between rich and poor within the country continued to grow. A leading national writer, Chinua Acheba, called attention to the continuing problem of national leadership in Nigeria with a series of newspaper articles, later published as *The Trouble with Nigeria*. The author criticized the corrupt leadership and called upon the nation's educated elite to confront the government. He further called for a unification of the disputing ethnic groups that were dividing the country.

The civilian government was short-lived. In December 1983, a coup returned a military regime to power. The new military government promised development and unification. A second coup in 1985 established a new military regime, which also expressed commitment to reform, modernization, and the return to a civilian government. In 1992, Nigeria put into effect a new Constitution, written under the auspices of the military government. With the new constitution, the Federal Republic of Nigeria was established October 1, 1992.

Reading and Discussion Guide

1. For your assigned time period, what was/were the form(s) of government or social organization for the peoples of Nigeria?

2. What were important characteristics of society and culture during that period? What were some significant accomplishments?

3. What significant social, economic, and/or political changes took place during this period? What were the positive and negative aspects of these changes?

4

THE CONSTITUTION, RELIGION, AND FAMILY LAW

Introduction: One of the most controversial decisions in the new constitution of the Federal Republic of Nigeria—effective October 1, 1992—was the decision to allow for the establishment of a Sharia (Islamic law) Court of Appeal—both for the Federal Capital Territory and at the state level. The debate on the Sharia was so volatile during the sitting of the Constituent Assembly that the military government ordered the suspension of the debate.

In a curious move, the military government said the issue of Sharia was outside the purview of responsibility of the Assembly. Once the Constituent Assembly finished its work and submitted its deliberations on the draft constitution to the Armed Forces Ruling Council for approval, the AFRC proceeded to modify the draft constitution, adding some sections, including the controversial Sharia provisions.

This lesson provides students with background on constitutional provisions regarding individual rights and the judicial system, as well as arguments for and against the Sharia clause. Students apply this information to a case study involving an issue of family law.

Objectives: Students will be able to:

1. Describe the provisions of the new constitution of Nigeria related to individual freedoms and the judicial system.

2. Explain arguments for and against inclusion of the Sharia clause in the new constitution.

3. Take and justify a position as to the resolution of a paternity/custody case.

Materials: Copies of Handouts N-6, N-7, and N-8 for all students

Time Required: 2-3 class periods

Procedure:

1. Begin the lesson by telling students that the issue of whether to allow for the establishment of a Sharia (Islamic law) Court of Appeal was extremely controversial when Nigeria's new constitution of 1992 was being written. In fact, the debate got so heated that the military government ordered that it be ended. Explain that after the Constituent Assembly submitted the constitution to the Armed Forces Ruling Council for approval, the AFRC modified the constitution by adding some sections, including the Sharia provision.

2. Distribute Handout N-6, which outlines provisions of the Nigerian constitution related to issues of minority rights, religious rights, and the resolution of customary disputes. Note that the original language of the constitution is retained as much as possible. Where complicated legal language might hamper understanding, simplicity has been achieved by adopting the interpretations favored by several Nigerian constitutional scholars.

Read the information on the constitutional provisions with students. Ask students whether a court based on religious law seems to be consistent with the other rights guaranteed by the constitution.

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3. Distribute Handout N-7, which describes the Sharia, as well as the arguments for and against inclusion of the Sharia clause in the constitution. Read and discuss this information with the students, asking them to take a position on inclusion of the Sharia clause.

4. Tell students that they are going to examine a hypothetical case involving family law. Distribute Handout N-8 and read the case description with students. Be sure students understand the sequence of events and the issues to be decided. Note that this hypothetical case is based on an actual case that appeared before the High Court of Ogbomoso, Oyo State, Nigeria. A decision in that case was rendered on March 5, 1980. The particulars of the case have been substantially altered for the purposes of this exercise. For details of the original case, see T. Akinola Aguda, ed., *The Marriage Laws of Nigeria* (Lagos, Nigeria: The Nigerian Institute of Advanced Legal Studies, 1981).

5. Divide the class into three groups, assigning one group to represent the appeal council for Mustapha Aliyu, one to represent the counsel for Moriamo Amope and Jimoh Ayinla, and one to represent a judge of the Supreme Court of Nigeria. Students should prepare their arguments as directed on Handout N-8. Allow time for the groups to meet and discuss the issues from their perspectives. Each group should choose one student to present their arguments to the class.

6. Allow three to five minutes for each of the attorneys to present their arguments before the Supreme Court. Members of the group representing the judge should be allowed to ask questions of the presenters; other members of the counsels' groups can provide assistance in answering the questions. When the two arguments have been presented, allow three to five minutes for the judge's group to caucus and make a decision. The decision and reasons underlying it should then be presented to the class.

7. After the decision has been presented and discussed, conclude the activity by asking the class to reflect on the impact of the Sharia clause. Does it establish a state religion or protect the rights of Muslim Nigerians?

WHAT THE NIGERIAN CONSTITUTION SAYS

Section 11. Non-adoption of State Religion: The government of the federation or of a State shall not adopt any religion as State Religion.

Section 35 (1). Right to fair hearing: guaranteed by an impartial and independent tribunal established by law. Includes questions involving violation of civil rights and obligations of a person by government.

Section 37 (1). Right to freedom of thought, conscience and religion, including freedom to change religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief, in worship, teaching, practice, and observance.

Section 259 (1). Establishment of Sharia Court of Appeal: There shall be for any State that requires it a Sharia Court of Appeal for that state. (2) The Sharia Court of Appeal, of the State shall consist of—(a) a Grand Khadi of the Sharia Court of Appeal; and (b) such number of Wadis of the Sharia Court of Appeal as may be prescribed by the House of Assembly of the State.

Section 261. Jurisdiction: The Sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the Law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic law where all the parties are Muslims.

Section 242. Appeals from Sharia Court of Appeal: An appeal shall lie from decisions of any Sharia Court of Appeal of a State to the Court of Appeal as of right in any civil proceedings before the Sharia Court of Appeal with respect to any question of Islamic law which the Sharia Court of Appeal is competent to decide.

Section 231 (1). Supreme Court, Appellate jurisdiction: The Supreme Court shall have jurisdiction to the exclusion of any other court to hear and determine appeals from the Court of Appeal.

Note: As in the case of the Court of Appeal, the constitution allows for persons learned in Islamic and customary law to be appointed to the Supreme Court. There must be at least three persons each learned in Islamic and customary law who could be appointed to the Supreme Court. Up to 15 justices can serve on the Supreme Court. The exact number is at the discretion of the President.

FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY

Apart from the enforceable provisions of the constitution, chapter II of the constitution contains some statement of principles intended to guide State policy and societal conduct. This feature was also included in the 1979 constitution. Some of the statements of principles relate to: the fundamental obligations of government; the democratic objectives of State; political, economic, social, and educational objectives; foreign policy objectives; obligations of the mass media; national ethic; and the duties of the citizen. Two specific examples are:

Section 16 (2). National integration shall be actively promoted whilst discrimination on the grounds of place of origin, circumstance of birth, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

Section 16 (3). For the purpose of promoting national integration it shall be the duty of the State to —
(c) encourage intermarriage among persons from different places of origin, or of different religious, ethnic, or linguistic association or ties.

Its lofty objectives notwithstanding, this part of the Nigerian constitution is unenforceable. Section 6, subsection 6(c) effectively renders the Fundamental Objectives and Directive Principles of State Policy meaningless. Subsection 6(c) of Section 6 essentially says if a law or judicial decision violates the fundamental objectives, that law or judicial opinion does not necessarily violate the constitution.

THE SHARIA

The Sharia is the code of traditional Islamic law, taken from the Koran, the Islamic holy book. Several aspects of the Sharia regulate relations between men and women—particularly married couples, child custody, post-marital responsibility, etc. The following summary of rules from the Sharia is distilled from writings by Muslim scholars. For a compendium regarding the development of this case study, see the following reference: T. Akinola Aguda, ed., *The Marriage Laws of Nigeria* (Lagos, Nigeria: The Nigerian Institute of Advanced Legal Studies, 1981).

Rules of the Sharia (order of rules has no significance):

Rule 1: It is forbidden in the Sharia for a woman in the "idda"—a period of waiting due to death, divorce or judicial annulment of the marriage—to marry another man. The idda specified by the Sharia is 4 months and 10 days.

Rule 2: No man is allowed to marry a woman already married to another or when she is undergoing idda.

Rule 3: No one is allowed to marry two men at a time.

Rule 4: No one is permitted to marry a woman that he has divorced three times until she is married to another man and that marriage is consummated. Then if she is divorced by the second husband, the first one can marry her if he so wishes.

Rule 5: Islam does not oblige a woman to marry a person with more than one wife. So it is optional for the woman. But a Muslim has obligation to marry more than one wife if the husband feels any of the following:

- **a.** his wife is inadequate on grounds of serious disease, incurable physical deformity, mental handicap, weakness and inability to care for husband's needs;
- **b.** he (the husband) is exposed to committing adultery—because of various temptations.

Rule 6: A mother has the right to custody of her child under Islam, provided certain conditions are fulfilled. One ground for losing the right to the custody of a child is if the mother is divorced.

Arguments Against Adopting the Sharia as Part of the Court of Appeals Process In Nigeria:

1. Such a clause sanctions state religion contrary to section 11 of the Constitution.
2. This clause discriminates on the basis of religion contrary to the constitution.
3. This clause introduces conflicts between Sharia and customary doctrines of law in some states in Nigeria. Sharia would be alien to the people and would cause chaos in the administration of justice.
4. Existing judicial tradition, including Section 14 (3) of the Evidence Act, 1945, holds that because of the plurality of religions and customs in Nigeria, no custom relied upon in any judicial proceeding shall be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience.

5. Establishment of Sharia courts is the establishment of religious courts—again in violation of Section 11 of the Constitution. Moreover, the Minorities Commission made it clear that southern Muslims do not accept the entire Koranic way of life.

Arguments in Favor of Adopting the Sharia as Part of the Constitution of Appeals Process in Nigeria:

1. There is a need to harmonize judicial opinions on the Sharia at the federal level because Islamic law had been observed and enforced for many years in many states in Nigeria.

2. Because it is difficult to empanel justices versed in Islamic law and because it is not advisable to call counsel versed in Islamic law to assist the Supreme Court in its decisions, it is best to set up special appellate courts dealing with Islamic law.

3. Nigeria is a secular state. However, present laws in Nigeria—because of their English tradition—are associated with a particular religion, Anglicanism or Episcopalian Christianity. Therefore, not to make provision for Muslims amounts to discrimination against them.

4. It is impossible to be a full Muslim without the practice of the Sharia. According to this view of classical Islamic theory, the Sharia is inseparable from the religion because Islam is a way of life, a religion, an ethic, and a legal system—all in one.

THE CASE OF MORIAMO AMOPE AND HER TWO LOVERS: WHO'S CHILD IS SALIU?

Characters:

Moriamo Amope is a member of the Yoruba tribe and a nominal Muslim. A high school teacher, she lives in Ogbomoso, Oyo State, in Southern Nigeria. Moriamo was married and divorced from Jimoh Ayinla three times; they have two children, girls ages 8 and 4 years. After her third divorce from Jimoh, Moriamo married Mustapha Aliyu. They were married for three years. Three months after leaving Mustapha, she married Jimoh for the fourth time. Three months after their marriage, she gave birth to a son, Saliu, who is now 1 year old.

Jimoh Ayinla is also a member of the Yoruba tribe and a nominal Muslim. He is a motor parts dealer in Ogbomoso, Oyo State. He has been married to Moriamo Amope four times, the last marriage taking place three months after she left Mustapha Aliyu.

Mustapha Aliyu is a member of the Hausa tribe and is a devout Muslim. A transporter and kola merchant, he is a native of Kano, Kano State, in northern Nigeria but lives most of the time in Ogbomoso, Oyo State. He was married to Mariamo Amope for three years. Two months after Mariamo left him, he married another woman in Kano. He is still married to this woman.

Other Particulars of the Case:

The case arose when Mustapha Aliyu sued for custody of the child Saliu. At the trial, evidence was presented that Moriamo Amope had engaged in frequent adulterous relationships with Jimoh Ayinla and possibly other unspecified individuals, during Mustapha's frequent trips to Kano. Testimony indicated that both Moriamo and Mustapha were frustrated by their inability to have children after three years of marriage. Mustapha then decided he had a religious obligation to marry another woman, though he preferred to keep his existing marriage to Moriamo. Polygamy was, however, unacceptable to Moriamo. She asked for a divorce. Two months after the irrevocable divorce, Mustapha married in Kano. One month later, Moriamo returned to Jimoh. Six months after the divorce from Mustapha, Moriamo gave birth to a baby boy, Saliu.

Mustapha based his suit for custody of the child on grounds Moriamo's fourth marriage to Jimoh was illegal under Islamic law. The trial judge agreed and awarded custody to Mustapha, citing the Islamic *idda* and the marriage rules of Sharia as two grounds for awarding custody to Mustapha.

On appeal, the judgment was reversed, on grounds the trial judge erred in not apprising himself of local customs and other circumstances in awarding custody to Mustapha. As part of the judicial record, the appeal judge said:

> The record of proceedings shows evidence of the questionable morals of Moriamo Amope, who was running, as it were, from pillar to post, and enjoying divorcing one man to the detriment or displeasure of the other. It is amazing that she had no scruples in coming back to Jimoh Ayinla, shortly before the birth of Saliu, the disputed child. The fact that the conception of Saliu occurred while she was still married to Mustapha is itself shameful. But I don't suppose her adulterous flirtations are sufficient grounds to doubt that paternity in this case belongs to whosoever Moriamo says is the father of the child. She says it is Jimoh Ayinla. I agree with her.
>
> I disagree with the learned counsel for the plaintiff, Mustapha Aliyu, that the religious consideration of both the plaintiff and the respondents be used in this case to deter-

mine the legality of the custody of the disputed child. In this part of the country, when custom clashes with religion, established precedence holds that the principle of natural justice be the determining factor in adjudication of tort. The finding is for the respondents, Moriamo Amope and Jimoh Ayinla.

Exercise:

Now, the case of Moriamo Amope and her two lovers is to be appealed to the Supreme Court of Nigeria. On the basis of all the information presented in this case study on personal law, customs, and the constitution of Nigeria, assume the following roles, as assigned by the teacher.

1. An appeal counsel, representing Mustapha Aliyu. What would be the grounds of your appeal? List the points you will cite as a basis for reversing the Ogbomoso High Court judge who awarded child custody to Moriamo.
2. A counsel for Moriamo Amope and Jimoh Ayinla, asking the Court to throw out the Mustapha appeal and sustain the decision of the appellate judge. What grounds would you rely upon—including those of the appeal court judge—to buttress your argument? List the points you will use for your argument.
3. A judge of the Supreme Court of Nigeria. On the basis of the facts presented in this case study, what position will you take at judgment? Justify your opinion on points of law—as outlined in the case study—and on the basis of the material facts in this case.

Cautionary Note: For the purposes of this case study, students should assume there are no scientific procedures for establishing paternity in suits of this nature. Local custom rejects the use of blood or any such genetic tests as sufficient basis for establishing paternity.

5

THE CONSTITUTION, THE PRESS, AND CIVIL LIBERTIES

Introduction: This lesson provides a case study on freedom of the press in Nigeria. Students first examine the provisions for freedom of the press and other civil liberties in the 1992 Nigerian constitution. They then learn about the restrictions of such rights allowed under the constitution and examine a 1984 decree that might be allowable under the 1992 constitution. Finally, they read of an actual press case and speculate on how the case might be treated under the 1992 constitution.

Objectives: Students will be able to:

1. Describe provisions of the 1992 constitution related to freedom of the press and other civil liberties.

2. Explain why the provisions for civil liberties in the 1992 constitution might be considered meaningless.

3. Take a position on how a historical free press case in Nigeria might be resolved under the new constitution.

Materials: Copies of Handouts N-9, N-10, and N-11

Time Required: 2 class periods

Procedure:

1. Distribute Handout N-9 and allow time for students to read it. Discuss the provisions for individual liberties in the new constitution. Ask students whether they agree with the author's statement that the rights are "completely negated" and made "meaningless" by Section 43.

2. Next, give students copies of Handout N-10 and discuss the provisions of Decree 4. Do students think such a decree could be passed by a state assembly under the new constitution?

3. Introduce the hypothetical case study on freedom of the press. Tell students they are to suppose that the Rivers state government, site of the case they are about to read, passes Public Law No. 4, which is very similar to Decree No. 4. They should further imagine that the event they are about to read occurs in 1994, after Public Law No. 4 has been passed and all relevant provisions of the 1992 constitution are in effect.

4. Distribute Handout N-11 and allow time for students to read the case. Use the following questions to check their understanding of the facts:

- Briefly describe what happened to Amakiri after publication of the story "Rivers Teachers on War Path."
- Why was Amakiri punished by the agents of the Rivers state government?
- How did the public react to the treatment of Amakiri? In what ways did the public express its displeasure with the government?

- Why do you suppose the Chief Judge of Rivers state, who was an appointee of the governor, ruled in favor of Mr. Amakiri?

5. Divide the class into three groups and assign each group one of the roles described on the handout. Allow time for the groups to prepare their arguments. Each group should choose a spokesperson to present their arguments to the class.

6. Allow three to five minutes for each group to make its arguments. Then facilitate a class discussion of the case. Finally, call for a vote on the issue. Following the vote, read the **Postscript** provided at the end of the handout. What lessons do students think can be learned from this case? Based on what they know about the 1992 constitution, does it promote freedom of the press and a free judiciary? Why or why not?

THE CONSTITUTION, THE PRESS, AND CIVIL LIBERTIES

The 1992 constitution for Nigeria provides no special rights or privileges for the press. In this sense, the provisions of the constitution are no different from previous charters. Press rights are construed in the form of individual rights. The relevant section of the constitution—Section 38 (1)—refers to the "right to freedom of expression and the press." This right to freedom of expression includes the right to hold opinions and to receive and impart ideas and information without interference.

Having given the right to freedom of expression and the press, several subsections of Section 38 effectively limits those rights and privileges. For example, subsection 2 prevents private ownership of broadcasting, and subsections 3 (1) and (b) leave room for the enactment of censorship laws provided such laws are "reasonably justifiable in a democratic society." Also, under the provisions of these subsections the legislative branch and the executive can restrict access to the press of virtually any public official at the federal, state, or local levels of government.

Aside from Section 38 the press is recognized in the 1992 Nigerian constitution in other ways. Section 22 under the Fundamental Objectives and Directive Principles of State Policy spells out what it calls the obligations of the mass media. According to Section 22, "the press, radio, television, and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and highlight the responsibility and accountability of the Government to the people."

Section 23 provides that "the national ethic shall be Discipline, Integrity, Dignity of Labour, Social Justice, Religious Tolerance, Self-Reliance, and Patriotism." However, the fundamental objectives and directive principles of state policy cannot be enforced because Section 6, subsection 6 (c) says if a law or judicial opinion violates the fundamental objectives, that law or judicial opinion does not necessarily violate the constitution.

Aside from press rights, other sections of the constitution that guarantee fundamental rights relating to civil liberties include Section 36, the right to privacy; Section 37, the right to freedom of thought, conscience, and religion; Section 39, the right to peaceful assembly and association; and Section 40, the right to free movement.

As is the case with Section 38 on free expression and the press, all of these fundamental rights are completely negated by Section 43, which provides for "Restriction on and derogation from fundamental rights." Section 43 (1) provides that "Nothing in sections 36, 37, 38, 39, and 40 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society—(a) in the interest of defense, public safety, public order, public morality, or public health; or (b) for the purpose of protecting the rights and freedom of other persons."

The language of Section 43 is sufficiently broad to render meaningless any previously guaranteed individual right under the 1992 constitution. As if to introduce even more confusion into the Nigerian constitution, the doctrine of state immunity in respect of liability in tort (civil proceedings) was revoked by the 1992 constitution (Section 6, subsection 6 (b), Part II). This is the first time this doctrine has been recognized in Nigeria and is a significant departure from the 1979 constitution.

THE GHOST OF DECREE 4 EMERGES IN THE THIRD REPUBLIC

As is the case with the Amakiri episode presented in this case study, Decree No. 4—"Public Officers (Protection Against False Accusation) Decree 1984"—remains one of the landmarks of press and journalistic history in Nigeria. Because of the relevance of Section 43 and of the Amakiri case that is to follow, the most formidable sections of Decree No. 4 are reproduced here:

> Any person who publishes in any form, whether written or otherwise, any message, rumor, report or statement, being a message, rumor, statement or report which is false in any material particular or which brings or is calculated to bring the Federal Military Government or the Government of a State or public officer to ridicule or disrepute, shall be guilty of an offense under this Decree.
>
> Any station for wireless telegraphy which conveys or transmits any sound or visual message, rumor, report or statement, being a message, rumor, report or statement which is false in any material particular or which brings or is calculated to bring the Federal Military Government or the Government of a State or public officer to ridicule or disrepute, shall be guilty of an offense under this Decree.
>
> It shall be an offense under this Decree for a newspaper or wireless telegraphy station in Nigeria to publish or transmit any message, rumor, report, or statement which is false in any material particular stating that any public officer has in any manner been engaged in corrupt practices or has in any manner corruptly enriched himself or any other person.

This obnoxious law, enacted by the Buhari government in 1984, provoked public outrage. It was scrapped in 1985 when the Buhari government was overthrown by the Babangida regime. But before Decree No. 4 was removed from the books, two journalists of the Guardian newspaper, *Lagos*, Mr. Tunde Thompson and Mr. Nduka Irabor, were jailed for one year each. Their newspaper was fined about $67,000. Their crime? Publishing false information and rumor about changes in postings of Nigerian ambassadors overseas. The journalists and their newspaper were found guilty of publishing false information because the name of one of the ambassadors was incorrect.

THE AMAKIRI EPISODE: DOES THE CONSTITUTION OFFER PROTECTION?

The Amakiri case arose from publication in the *Nigerian Observer* of July 30, 1973, of the news of a press conference held by the Nigerian Union of Teachers (NUT) in Port Harcourt, capital of Rivers state. At the conference, the NUT expressed displeasure with conditions of its teachers, and made the following demands:

- That the Rivers state government should release salary increments withheld from its 3,500 members.
- That the Rivers state government should pay salary arrears and the regular salaries of teachers for that month which had not been paid.
- That teachers who had been fired by the government be reinstated.

The teachers threatened to sit back from the National Day celebration and even prevent school children from participating in the celebration if their demands were not met by the end of the following month.

The *Nigerian Observer* correspondent in Port Harcourt, Minere Amakiri, reported that news in a story titled "Rivers Teachers on War Path," which said, in part: "Teachers in the Rivers state have threatened to resign en masse if by August 31 the state's Ministry of Education failed to meet their long standing demands...."

The story appeared on the day the military governor of the Rivers state, Navy Commander Alfred Diette-Spiff, was celebrating his 31st birthday. The state government perceived the story as "embarrassing" because while the *Nigerian Tide*, the state government-owned newspaper, published eulogies and praises of the governor on his birthday, the *Nigerian Observer*—an out-of-state newspaper—published a story that "embarrassed" the military governor. Yet the *Nigerian Tide* had published the same story two days before the governor's birthday, without complaints from the government.

Following publication of the *Observer* story, a team of military and police officers led by Police Superintendent Ralph Iwowari, the Aide de Campe (ADC) of the Rivers state governor, went to Amakiri's house with an invitation from the state governor for a meeting. That invitation led to detention in the military cell at the governor's residence. On orders of the governor's ADC, Amakiri's hair was shaved, and his beard removed. Then, he was stripped and whiplashed 24 times on his bare back. Following this treatment, Amakiri was locked up in a police cell for 27 hours. In his own words, Amakiri said of this humiliation:

> I was stripped naked and ordered to lie on the dirty floor. One of the soldiers pulled out his "koboko" whip and within 10 minutes he had finished his job, leaving me howling in excruciating pain. My whole body was a mess of blood and bruises.
>
> Immediately after, they took me into an unused toilet and locked me up. I was not allowed to receive my pregnant wife who came in later that night to give me food. She was refused entry by the guards.

At the time of this incident, the Rivers state government at first gave no explanation for what happened. Following severe public criticism, the government denied Amakiri was abused because a story critical of the state government appeared on the governor's birthday. The government, however, said Amakiri was punished because of past criticisms of government.

Public criticism of the action of the government was unrelenting. Pressure was put on the federal government to do something. Professional newspaper organizations, teachers, unions of journalists, individual letters to the editor—all expressed outrage about the Amakiri incident and wanted both the state governor and all other culprits disciplined.

Finally, Mr. Amakiri went to court, backed by the funding of the Nigerian Union of Journalists. The suit was filed under two legal premises: (1) Section 21 of the 1963 Nigerian Constitution which provided that any person who is unlawfully arrested or detained shall be entitled to compensation; and (2) Section 385 of the Criminal Procedure Law, which in 1970 abolished whipping as a mode of punishment. Amakiri asked the court to declare his detention and whipping unconstitutional and a violation of his rights.

For the purpose of the following exercise, assume that Section 385 of the Criminal Procedure Law of 1970 has been incorporated into the 1992 constitution and is therefore valid.

Exercise:

Suppose the Amakiri incident happened in 1994, after all the relevant provision of the 1992 Nigerian constitution were effected. Furthermore, suppose that by 1994, there is a law on the books of Rivers state known as Public Law No. 4, similar to Decree No. 4 outlined in Handout N-10. Based on the particulars of the Amakiri episode outlined above and given the constitutional provisions discussed in Handout N-9, assume the role assigned by the teacher:

1. Legal counsel to Mr. Amakiri. You want to go to court to seek redress. Under what grounds might you seek such redress, given the constitutional rights and privileges available? List the arguments you will make. List the relevant sections of the constitution you would rely upon to make your case.

2. Opposing counsel, representing the Rivers state government. What arguments might you marshall to justify the actions of the state government? What sections of the law might you rely upon to limit liability for the Amakiri abuse?

3. Counsel for the press, filing an *amicus curiae*—friend of the court—brief on behalf of several newspaper organizations. What arguments might you rely upon to guarantee your legal standing before the court, in order to present arguments in favor of Mr. Amakiri? What arguments would you make before the court in order to discourage future conduct by government that might be similar to the Amakiri episode?

Postscript:

How was the Amakiri incident finally resolved? On March 20, 1974, a high court in the Rivers state presided over by the Chief Judge, Ambrose Allagoa—an appointee of Governor Diette-Spiff—ruled in favor of Amakiri. Mr. Amakiri was awarded $200 for every stroke of the cane that he received; $3,500 for being detained illegally; and another $3,500 for emotional distress. In his judgment, Justice Allogoa said, in part:

> The plaintiff should never have been flogged because whipping as a mode of punishment was abolished by Section 385 of the Criminal Procedure Law, as far back as 1970. In the circumstances of this case... it might serve as a reminder to all concerned that, although there is military government in power... the fundamental rights touching personal liberty, freedom of movement, right to property and freedom of conscience are still provided for in the Constitution.

Interestingly, no action was taken by any authority against Commander Diete-Spiff, the state governor at the time of the incident. None of the officials involved in the beating and humiliation of Amakiri were ever punished or publicly reprimanded.

What lessons can be learned from the Amakiri case? One obvious lesson from this case is that the dream of a free press can be realized through a free judiciary. While the government attempted to muzzle the freedom of the press, the court courageously struck down the government action and upheld the journalist's freedom to disseminate opinions and ideas.

The role of the judiciary in helping maintain a free press, or at least in protecting Nigerian journalists from being intimidated unconstitutionally by the government, has been demonstrated in other cases in Nigeria. Another example was a 1977 case in which a court in Kwara state agreed with a journalist that his employer, the government-owned newspaper the *Nigerian Herald*, was wrong in demoting the journalist as the newspaper's editor. The demoted editor was awarded the equivalent of $10,000.

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